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Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 18, 1899.

BOSTON:

WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1899.

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Commonwealth of Massachusetts.

OFFICE OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 18, 1899.

To the Honorable the President of the Senate.

I have the honor to transmit herewith my report for the year ending this day.

Very respectfully,

HOSEA M. KNOWLTON,
Attorney-General.

Commonwealth of Massachusetts.

OFFICE OF THE ATTORNEY-GENERAL,
Rooms 225 and 226, State House.

Attorney-General.

HOSEA M. KNOWLTON of New Bedford.

Assistants.

FREDERICK E. HURD of Boston.

SPECIAL ASSIGNMENTS.—Heads of Departments.

Metropolitan Park Commission.
Abolition of Grade Crossings.

JAMES MOTT HALLOWELL of Medford.

SPECIAL ASSIGNMENTS.—Metropolitan Water Board.

Metropolitan Sewerage Commission.
Harbor and Land Commissioners.
Prerogative Writs.

FRANKLIN T. HAMMOND of Cambridge.

SPECIAL ASSIGNMENTS.—Metropolitan Park Commission.

Massachusetts Highway Commission.
State Board of Charity.
State Board of Insanity.
Public Charitable Trusts.

ARTHUR W. DEGOOSH of Cambridge.

SPECIAL ASSIGNMENTS.—Collateral Inheritance Tax.

Receiverships.
Commissions and State Boards other than
those enumerated above.
Extradition and Interstate Rendition.
Corporations.
Collections.

Clerk.

LOUIS H. FREESE of Stoneham.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES.

Appropriation for 1898,	\$36,000 00
<i>Expenditures.</i>	
For law library,	\$1,550 77
For salaries of assistants,	12,386 00
For clerk and stenographers,	3,180 57
For office expenses,	3,789 44
For court expenses,*	1,248 36
<hr/>	
Total expenditures,	\$22,155 14
Costs collected,	774 55
<hr/>	
Net expenditure,	\$21,380 59

* Of this amount, \$774.55 has been collected as costs of suits and paid to the Treasurer of the Commonwealth.

Commonwealth of Massachusetts.

OFFICE OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 18, 1899.

To the General Court of Massachusetts.

In compliance with Public Statutes, chapter 17, section 9, I submit my report for the year ending this day.

The cases requiring the attention of the office during the year to the number of 1,274 are tabulated below:—

Indictments for murder,	12
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Tax returns of corporations enforced without suit,	131
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Collections made without suit,	110
	1,274

CAPITAL CASES.

Indictments for murder, pending at the date of the last annual report, have been disposed of as follows:—

DOMINIQUE KRATHOFSKI, *alias DOMINIQUE KFIOTOSKI*, of Springfield, indicted in Hampden County, May, 1897, for the murder of Victoria Pinkos at Springfield, Jan. 17, 1897. On May 24, 1897, he was arraigned and pleaded not guilty. Thomas W. Kenefick and John T. Moriarty were assigned by the court as counsel. On Jan. 5, 1898, he was tried at Springfield by a jury before Dewey and Maynard, J.J., and a verdict was rendered of guilty of murder in the first degree. Exceptions were filed by counsel for the prisoner, and were argued before the supreme judicial court in March, 1898. The exceptions were overruled June 23, 1898. On Oct. 7, 1898, he was sentenced to death. Sentence was executed Dec. 30, 1898. The trial of the case was conducted, on the part of the Commonwealth, by Charles L. Gardner, district attorney.

GILBERT PETERS of Winchendon, indicted in Worcester County, August, 1897, for the murder of Bell Rollins of Royalston, June 18, 1897. On Aug. 12, 1897, he was arraigned and pleaded not guilty. Charles F. Baker and Sidney P. Smith were assigned by the court as his counsel. On Jan. 21, 1898, he retracted his plea of not guilty and pleaded guilty of manslaughter. The plea was accepted by the Commonwealth, and he was thereupon sentenced to the State Prison for not less than ten nor more than thirteen years. The case was in charge of Herbert Parker, district attorney.

ALFRED C. WILLIAMS of Lynnfield, indicted in Essex County, September, 1897, for the murder of John Gallo at Lynnfield. On Oct. 4, 1897, he was arraigned and pleaded not guilty. Charles A. Sayward and Nathaniel N. Jones were assigned by the court as counsel for the prisoner. On Feb. 7, 1898, he was tried at Salem by a jury before Dunbar and Braley, J. J.; and a verdict was rendered of guilty of murder in the first degree. Exceptions were filed by coun-

sel for the prisoner, and were argued before the supreme judicial court at Boston in March, 1898. The exceptions were overruled June 23, 1898. On July 9, 1898, he was sentenced to death, and sentence was executed Oct. 8, 1898. The trial of the case was conducted by the Attorney-General, ably assisted by Alden P. White, district attorney.

JEREMIAH MANCHESTER, Jr., of Westport, indicted in Bristol County, November, 1897, for the murder of Holder A. Tripp at Westport, July 11, 1897. On Nov. 19, 1897, he was arraigned and pleaded not guilty. Edward Higginson and Charles R. Cummings were assigned by the court as counsel for the prisoner. Feb. 24, 1898, he retracted his plea of not guilty and pleaded guilty of manslaughter. The plea was accepted by the Commonwealth, and he was thereupon sentenced to the State Prison for not less than six nor more than eight years. The case was in charge of Andrew J. Jennings, district attorney.

FRANCIS McLAUGHLIN of Boston, indicted in Suffolk County, December, 1897, for the murder of Margaret McLaughlin at Boston, Nov. 15, 1897. On Dec. 23, 1897, he was arraigned and pleaded not guilty. William N. Sullivan was assigned by the court as counsel for the prisoner. On Jan. 21, 1898, he was adjudged insane, and committed by the court to the Worcester Lunatic Hospital. The case was in charge of Oliver Stevens, district attorney.

Indictments for murder found since the date of the last annual report have been disposed of as follows:—

IDA W. BRIGGS of Worcester, indicted in Worcester County, May, 1898, for the murder of her infant child at Worcester, May 2, 1898. She was arraigned May 20, 1898, and pleaded not guilty. In August, 1898, she was convicted and sentenced upon another indictment for manslaughter, charging the same homicide; and thereupon the district attorney disposed of the indictment for murder by a *nolle-prosequi*. The case was in charge of Herbert Parker, district attorney.

MATTHEW HARRIGAN, *alias* MATTHEW HORRIGAN, of Attleborough, indicted in Bristol County, June, 1898, for the murder of John Cotter, March 18, 1898. On June 23, 1898, he was arraigned and pleaded not guilty. On Dec. 2, 1898, he retracted his plea of not guilty and pleaded guilty of manslaughter. The plea was accepted by the Commonwealth, and he was thereupon sentenced to State Prison for not less than fifteen nor more than eighteen years. The case was in charge of Andrew J. Jennings, district attorney.

SAMUEL MAXWELL of Lowell, indicted in Middlesex County, June, 1898, for the murder of Christina M. Maxwell at Lowell, May 31, 1898. He was arraigned June 11, 1898, and pleaded not guilty. Frederick Lawton and John J. Harvey were assigned by the court as his counsel. On Oct. 25, 1898, he retracted his plea of not guilty and pleaded guilty of murder in the second degree. This plea was accepted by the Commonwealth, and he was thereupon sentenced to the State Prison for life. The case was in charge of Frederick N. Wier, district attorney.

LEBIE BOIARSKY, *alias* LIZZIE BOIARSKY, of Boston, indicted in Suffolk County, September, 1898, for the murder of her infant child at Boston, Aug. 4, 1898. She was arraigned Oct. 19, 1898, and pleaded guilty of manslaughter. The plea was accepted by the Commonwealth, and she was thereupon sentenced to the Reformatory Prison for Women for two years. The case was in charge of Oliver Stevens, district attorney.

NATHANIEL MOSLEY of New Marlborough, indicted in Berkshire County, January, 1898, for the murder of George H. Spooner of New Marlborough, Oct. 16, 1897. On Jan. 27, 1898, he was arraigned and pleaded not guilty. Charles E. Hibbard and Milton B. Warner were assigned by the court as counsel for the prisoner. On Jan. 12, 1899, the prisoner was adjudged insane by the court, and committed to the Hospital for Chronic Insane. The case was in charge of Charles L. Gardner, district attorney.

The following indictments for murder are now pending:—

JOHN H. CHANCE, *alias* JOHN H. SCHULTZE, and ARTHUR HAGAN, of Boston, indicted in Suffolk County, June, 1898, for the murder of Charles L. Russell, at Boston, April 4, 1898. On Aug. 19, 1898, Chance was arraigned and pleaded not guilty. Hiram P. Harriman and G. Philip Wardner were assigned by the court as his counsel. Hagan was arraigned Oct. 14, 1898, and pleaded not guilty, and George R. Swasey and Florence F. Sullivan were assigned by the court as his counsel. The court has assigned the case for trial on Feb. 6, 1899.

NATLINO GUILIANO, *alias* NATALE YULIANO, of Springfield, indicted in Hampden County, September, 1898, for the murder of Pietro Fazio at Springfield, June 12, 1898. He was arraigned Nov. 30, 1898, and pleaded not guilty. S. S. Taft, Esq., and James E. Dunleavy, Esq., were assigned as his counsel. The date for trial has not been fixed. The case is in charge of Charles L. Gardner, district attorney.

THE OFFICE OF THE ATTORNEY-GENERAL.

The year in this office has been characterized by an unprecedented amount of business. The table of matters requiring the attention of the office, printed on page ix, while showing a larger number than in any preceding year, fails, nevertheless, to state adequately the amount of business transacted, for the reason that no record is made of consultations with State officers and boards, excepting in the comparatively few cases in which opinions in writing are submitted. It has become more and more the practice of officers in all departments of the government to consult with this office. Many such consultations are had daily, occupying very much of the time of the Attorney-General and his assistants. It is, however, a commendable practice, and is one which brings the law department into closer touch with all the departments of the government of the Commonwealth.

The increase in the amount of business before the full bench of the supreme judicial court has been especially

marked. Although exceptions in criminal cases are no longer in charge of this office, the Attorney-General has appeared in twenty-two cases pending before the full court. Of these, sixteen have been argued, two submitted upon briefs, and four have not yet been reached for argument. This does not include informations and other proceedings in the name of the office, which are in charge of counsel employed by the parties for whose benefit such proceedings are instituted, but only those directly in charge of the Attorney-General.

The rooms assigned to the Attorney-General in the State House were first occupied March 28, 1898. They comprise the whole of the main floor of the Bulfinch front, east of the main corridor, and one room of the Bryant addition. The rooms are well equipped and adapted to the business of the department.

Prior to 1854, no offices, so far as I can discover, were assigned to the Attorney-General, in the State House or elsewhere. In that year, Mr. John H. Clifford being Attorney-General, a room was assigned to him in the State House. It was on the main floor, in the south-east corner, being a portion of the space occupied by the present offices. This room was occupied by Mr. Clifford, and afterwards by Mr. Stephen H. Phillips and by Mr. Dwight Foster. In 1864, when Mr. Chester I. Reed first held the office, rooms were assigned for him at No. 30 Court Street, Boston; and the same office was occupied by Mr. Charles Allen during the time of his incumbency of the office. When Mr. Charles R. Train was elected, offices were leased for him in Barrister's Hall, at No. 7 Court Square. Mr. George Marston, the successor of Mr. Train, was in the Equitable building. Mr. Edgar J. Sherman, during his first year (1883), was in the Mason building. In January, 1884, the office was removed to the Commonwealth building, where it remained until March of this year.

This history, which I have taken some trouble to verify, deeming that it may be important as a matter of future reference, indicates the comparative unimportance of the office in its earlier years, so far as concerned its connection with the administration of the government of the Commonwealth, and

the change in this respect which has come about in recent years. Formerly the chief business of the Attorney-General was the trial of capital cases and the argument of exceptions in criminal cases. The latter is now wholly, and the former principally, in charge of the district attorneys; but in place of these, the office has been entrusted with all the law business of the Commonwealth. It is well, therefore, that, after being without an official home for seventy-five years and being migratory for fifty years, it is at last established, permanently, it may be hoped, in the State House.

ENFORCEMENT OF CIVIL SERVICE STATUTES AND RULES.

Questions frequently arise concerning the construction of the statutes relating to the civil service and the rules of the commission established under the authority thereof. It often happens that persons are employed in official positions without being certified under the civil service rules, who, in the opinion of the commissioners, are within the rules, while, on the other hand, the persons or board having the right of appointment are otherwise advised. Such cases do not amount to an intentional violation of the statutes. It is not the less important, however, that the questions involved should be determined. Under the law as it now stands there is no method ordinarily of settling these questions excepting by indictment. Proceedings in the nature of *quo warranto* can only be had against those who come within the class of public officers, and in many cases it is at least doubtful whether the incumbent whose appointment is alleged to be unlawful is a public officer. The process of indictment, besides being cumbrous, is an unsatisfactory method of proceeding against a person for acts done in good faith and upon the advice of counsel. It is obvious that a person without intention of violating the law should not be proceeded against criminally, if there can be any other form of remedy.

I recommend that suitable legislation be enacted, authorizing the Attorney-General to bring informations in the nature of *quo warranto* to try all questions of title of persons in the public service, whether they be public officers or public employees.

DELAYS IN THE TRIAL OF CIVIL CASES.

Much has been done in recent years to expedite the trial of criminal cases, and there is now little room for complaint by one charged with crime that he cannot obtain justice, as the Declaration of Rights asserts he is entitled to, "promptly and without delay."

But, while many of the delays that formerly attended civil proceedings have been obviated, there is still much opportunity for further improvement. Parties in cases referred to auditors have special cause for complaint, on account of the annoying delays which seem now to be inevitable in such hearings. As the law stands, and as the practice is now established, it is practically impossible to obtain a hearing in a cause referred to an auditor, excepting at the convenience of counsel. Such hearings have no rights as against engagements of counsel in court, and the auditor has no power to speed the proceedings. If he ventures to do so, and hears the case when one side is not represented, the case is usually referred back to him again for rehearing.

I suggest two remedies, which, in part at least, would tend to remedy this difficulty. One is, that the court, upon application, have power to appoint a time certain for the trial of a cause pending before an auditor, and that thereupon the party neglecting to attend at such hearing, without just cause, be subject to default or non-suit, as in the case of parties failing to attend the trial of a case in the court itself. Another is, that engagements of counsel and of the auditor in an auditor's hearing be given the same rank, so far as counsel are concerned, as cases in the higher courts, by providing that Stats. 1890, c. 451, shall apply to attorneys or auditors actually engaged in the trial of a cause before an auditor, at least when the hearing is proceeding under special order of the court.

The operation of the statute last referred to, which provides, in substance, that an attorney engaged in the trial of a cause shall not be held to be ready in the trial of any other cause until at liberty, is also the occasion of much delay. I am of opinion that it is unwise legislation, and that the English rule, which, as I am informed, permits no

other engagement of a barrister to delay the trial of a cause at the time set down, is better, both for parties and attorneys. I presume, however, that it would be somewhat difficult to convince the bar of this proposition. But I think the statute should at least be so amended as to apply only to conflicting engagements in the same county.

WARRANTS IN CRIMINAL CASES.

I have been informed that it is the practice in some jurisdictions for officers receiving warrants for the arrest of persons to delay serving them, and in some cases to return them without service, although the defendant could have been found and arrested. It is, in my opinion, a practice dangerous in its tendency, and one which affords opportunity for the levying of blackmail. Officers have no business with warrants excepting to execute them as soon as may be; and, if the law does not so explicitly provide, it should do so.

TRIAL BY JURY.

If, as is often said, trial by jury is the safeguard of liberty, it is none the less true that the character of jurymen is the safeguard of jury trial itself. It is only when ignorant or venal men make up juries that this method of determining issues of fact becomes discredited. I am not aware that any well-grounded cause of complaint exists with reference to the system of jury trial in this Commonwealth. On the contrary, our juries as a rule are made up of good men, and substantial justice is almost uniformly attained.

It is well known, however, that the majority of citizens, particularly those who, by reason of education and experience, would make the best jurymen, are never called upon to serve. This is due in part to the fact that so many classes of citizens are by law excused from jury service. In addition to those holding offices incompatible with jury duty, such as attorneys-at-law and clerks of courts, the statutes exempt, among others, ministers, physicians, teachers in colleges and academies, bank cashiers, members of the volunteer militia, firemen, and the members of the Ancient and Honorable Artillery Company. In addition to these, many persons

who are not exempt appear to have sufficient influence to procure the omission of their names from the jury box. The greater number of these, both those exempt by law and those who procure their own exemption, are the very men who should sit upon the jury.

That the list of exemptions is so large is chiefly due without doubt to the fact that so long a term of service is usually required of jurymen. This in Suffolk is practically six weeks, and in other counties often longer. Few men in active life can be taken away from their occupations so long a time without serious injury to their business; and yet it is the men in active life who should serve on juries.

To further improve the excellence of the jury system, I recommend that the number of exemptions be so far reduced as to include only those whose duties are incompatible with jury service; and, that the burden of jury duty may not be unduly irksome, I further recommend that the term of service of jurymen be limited to two weeks. I am aware that it is often urged in favor of long terms of service that jurors thereby become better acquainted with the work, and more effective. I do not think this contention is well founded. Special training is not only not requisite, but is undesirable, for service upon the jury. It is not familiarity with court proceedings that makes a good jurymen, but experience in the affairs of life. Capital cases, for example, are tried by men summoned specially for the case itself, and I believe it is conceded that no better juries serve in our courts.

There are few men who cannot spare two weeks from their work for public service without serious interruption to their private business. It is a tribute which every man should be called upon to pay to the public. If the term of service were thus shortened, and the name of every citizen, however high in business or social circles, were placed in the jury box, and no excuse for jury duty, excepting sickness, permitted, I believe the character of our juries, already high, would be still further improved.

METROPOLITAN WATER BOARD.

The important work of the Metropolitan Water Board is approaching completion. On the first day of January, 1898, it took, in behalf of the Commonwealth, the water works of the city of Boston, and connected them with its other sources of supply already constructed or in process of construction. Many important questions of law have arisen, and are likely to arise, in consequence of the proceedings of the Board, which will require the attention of this office. Experience has shown the need of certain amendments to the statutes relating to the work of the Board, and I beg to submit the following specific suggestions to that end:—

1. A large number of petitions for damages have been brought by land owners on account of claims arising through the construction of the water system. These petitions are brought under the various provisions of the Stats. of 1895, chapter 488.

Section 13 of that statute provides that, except in the cases in which payment is otherwise provided for, persons sustaining damage may file in the office of the clerk of the superior court in the county in which the property taken is situated a petition for a jury to determine such damages; and that thereupon the damages so sustained shall be determined by a jury in said court in the same manner as damages for land taken for highways. Section 14 of the statute provides that in certain other cases the remedy is by a petition filed in the supreme judicial court, and that thereupon the court shall appoint one or more commissions to hear the parties and determine upon the damages; that said commissions shall report their determinations to the court; and that either the petitioners or the defendants, if they are dissatisfied with the finding made by the commission, may appeal to a jury in said supreme judicial court.

An examination of the act shows that, in addition to the claims for damages which are usually allowed under statutes authorizing the seizure of land by the right of eminent domain, this statute has authorized the payment of claims for consequential damages which heretofore it has been the policy of the Legislature to disregard. Of the latter class

are damages to certain real estate not taken but directly or indirectly decreased in value by this act, or by the doings of the board thereunder; and likewise damages from loss of custom or otherwise to certain individuals or firms established in business on land in West Boylston and Sterling.

I am led to believe that it was the intention of the Legislature to have these cases involving consequential damages tried in the first instance before a commission, with a right of appeal afterwards to a jury. The language of the statute is so involved and obscure, however, that in some cases claimants for consequential damages have brought petitions for a jury without the intervention of a commission, while on the other hand, claimants for merely the value of land taken have filed petitions for a commission. Attorneys for claimants have found it exceedingly difficult to determine in which court and under which sections their petitions should be brought, and have sometimes brought them in the wrong court.

It is evident that the meaning of the statute should be made more clear. I recommend, therefore, legislation which will carry out its evident intent, and which will enable the land owners to ascertain their rights more certainly and with less difficulty than is now the case.

2. After a hearing before the commissioners upon a petition brought under the provision of section 14, their determination is filed in court, and either party, if dissatisfied therewith, has the right to appeal to a jury. In the trial before the jury, however, the commissioners' report cannot be used even as *prima facie* evidence. The hearing before the commission, therefore, involves an outlay of expense, of time and of trouble, which is met by no corresponding advantage. The commissioners' report should at least be given the importance which is attached to an auditor's report. In the latter case, by statute, the report can be read to the jury, and serves as *prima facie* evidence. I recommend that similar legislation be passed concerning the reports made by these commissioners.

3. The statute authorizing the construction of the metropolitan water system gives authority to the Metropolitan

Water Board and to the State Board of Health to make orders, rules and regulations for the sanitary protection of the waters. It likewise attempts to provide by fine or imprisonment for the punishment of any person violating or refusing to comply with such rules. It is doubtful, however, whether, under the present statute, an offender against these provisions could be convicted ; for, although the statute provides that rules may be made, and provides that persons violating them shall be fined or imprisoned, it provides no method whereby legal notice of the establishment of said rules can be given to the public. Regulations of this nature are quasi-penal statutes. The enactment of a penal statute by the Legislature is of itself notice to all persons ; but this cannot be said of rules or regulations enacted by a commission in its private office. I recommend, therefore, the enactment of legislation providing for the publication of such rules, and providing that such publication shall be deemed legal notice to all persons.

4. The city of Boston has a claim against the Commonwealth, on account of the taking made by the latter of the city's system of water works, under authority of St. 1895, c. 488, § 4. In case the water board and the city of Boston are unable to agree upon the amount of damages, a petition for the assessment of such damages must be filed in the office of the clerk of the superior court for the county in which the property taken is situated. This property, consisting largely of water rights, is situated in various counties, and, consequently, under the present law, what legitimately is but one cause of action must be split up into several suits, petitions therefore must be filed in different counties, and the cases must be tried separately before different tribunals.

I recommend the passage of legislation authorizing the consolidation of these various suits, in order that they may be tried at the same time and before the same tribunal. It seems just, likewise, considering the amount involved, that a clause should be inserted to the effect that interest shall be included in the damages, from the date of the taking, at such rate as the tribunal before whom the case is tried may deem just and equitable. Under the present statue, interest

is allowed at the rate of six per cent. from the date of the taking, which was in January, 1898. I recommend that such legislation be enacted.

5. During the course of construction of the metropolitan works under the supervision of the Commonwealth it has been found advisable to obtain from the contractors doing the work bonds conditioned upon the faithful performance of their contracts; and, owing to the large amounts involved, the contractors have usually requested that some surety company be accepted upon their bonds instead of private individuals. The surety companies named are, in most cases, foreign corporations.

Upon examining the statutes, I have found that there is some doubt as to the right of a foreign surety company to become surety upon a bond running to the Commonwealth. There is no sufficient reason why such a company should not act as surety upon such bonds, as in the case of probate and other official bonds. In fact, a large number have already been accepted, guaranteed by the companies in question.

In order amply to protect the interests of the Commonwealth in the contracts already made, and to remove the ambiguity now existing in the statute, legislation should be enacted declaratory of the meaning of the insurance statute allowing foreign surety companies to serve as sureties upon bonds running to the Commonwealth.

RECOMMENDATIONS IN PREVIOUS REPORTS.

I resubmit sundry recommendations made in the previous reports of the Attorney-General, to which reports I beg to refer for the reasons therefor:—

1. That the distinctions between larceny and embezzlement and larceny and cheating be abolished, and that these offences be consolidated into the single crime of larceny.

2. That the statutes relating to proceedings in probate courts be so amended that, when questions arise in which the parties have the right of trial by jury, parties desiring such a trial shall claim the same in the probate court; and that thereupon the probate court shall suspend further hearings on the questions involved, and frame issues for the jury

to be tried in the higher courts without removing the case itself.

3. That all sittings of the supreme judicial court *in banc* shall be held in Boston and in Springfield, with suitable rules, adapted to secure a speedy hearing of cases; that the common law jurisdiction of the supreme judicial court be transferred to and exercised exclusively by the superior court; and that the *nisi prius* terms of the supreme judicial court be abolished.

ASSISTANTS.

On the first day of July, 1898, George C. Travis, who had been connected with the office as first or senior assistant since March 14, 1891, resigned his position; and Frederick E. Hurd, Esq., of Boston, was appointed in his place.

It is but justice to Mr. Travis to say that during the seven years of his service he performed the duties of his office with distinguished ability and served the Commonwealth faithfully and well.

Respectfully submitted,

HOSEA M. KNOWLTON,

Attorney-General.

OPINIONS.

Assessment insurance.—Increase of assessments.—Approval of Insurance Commissioner.

The Mutual Reserve Fund Life Association is an assessment insurance company, and if it proposes to increase an assessment over the last prior assessment, St. 1896, c. 515, § 7, makes it the duty of the Insurance Commissioner to grant or withhold his approval thereof.

JAN. 22, 1898.

Hon. FREDERICK L. CUTTING, *Insurance Commissioner.*

DEAR SIR:—The form of policy issued by the Mutual Reserve Fund Life Association which has been submitted to me provides that upon stated times during each year “there shall be payable to the association a mortuary premium for such an amount as the executive committee of the association may deem requisite, which amount shall be at such rates, according to the age of each member, as may be established by the board of directors.” The amounts so collected, less twenty-five per cent. set apart for the reserve fund, go into the death fund to meet the current mortality of the association.

This stipulation brings the company clearly within the class of assessment companies; that is to say, companies whose contracts call for such assessments as are sufficient to meet the claims upon them from time to time, in distinction from level-premium companies, whose contracts call for the payment of a fixed sum.

St. 1896, c. 515, § 7, was an attempt to give supervision over increase of assessments upon those insured in that class of companies, by providing that “no call in excess of the last prior call shall be made without the consent and approval in writing of the Insurance Commissioner.” I understand that this company proposes to make such a call, and your approval thereof has been requested; and the question submitted by your letter of January 14 is “whether, under the above-named provision of law, the Insurance Commissioner has any duty in this matter.”

If I understand your question, I answer it by saying that it is your duty under the statute to consider whether the increase in the call is necessary, and whether the interests of the policy holders and the solvency of the company require that such increase be made; and to grant or withhold your approval, in your discre-

tion, upon consideration of all the circumstances affecting the question.

It does not appear to me to be necessary to consider whether the statute under discussion is unconstitutional, as being a law impairing the obligation of contracts. The duty of an executive officer, ordinarily, is to conform to the statutes enacted for the conduct of his department, not to discuss their constitutionality. I see no reason why this case should present an exception to the rule. Whether the law impairs the obligation of insurance contracts is a question which should be raised by the contracting parties.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Massachusetts Hospital for Epileptics, — inmates.

Persons received into the hospital under St. 1895, c. 483, § 10, are "inmates" thereof, and charges for their support may be collected in the same manner as charges for the support of persons committed thereto by the courts.

JAN. 25, 1898.

WILLIAM N. BULLARD, M.D.,

Chairman, Massachusetts Hospital for Epileptics.

DEAR SIR:— Your letter of December 7 requests the opinion of the Attorney-General as to whether the charges for the support of patients received into the Massachusetts Hospital for Epileptics, under St. 1895, c. 483, § 10, "may be collected from the State or place of settlement as in the case of commitments by the courts."

Section 12 of the same chapter determines who shall be responsible for the support of inmates of the Massachusetts Hospital for Epileptics. That section provides that the charges for the support of such inmates of the hospital as are not of sufficient ability to pay for their own support, or have not persons or kindred bound by law to maintain them, shall be paid by their place of settlement if they have a legal settlement in this State; but, if they have no legal settlement in this State, such charges shall be paid by the Commonwealth at the rate provided by law for the support of city, town and State patients in the State lunatic hospitals.

It makes no distinction between persons received into the hospital under section 10 and those committed thereto by an order of court. Persons received under section 10 are "inmates" within the meaning of section 12, and the charges for their support may be collected in accordance with that section.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Governor and Council. — Commutation of punishment. — Removal of prisoner.

When the Governor and Council have commuted the punishment of a convict, and caused a warrant for the purpose to issue to an officer, their jurisdiction in the matter has ended, and the prisoner is thereafterwards to be held as though the sentence provided for by the order of commutation had been imposed by the court.

Their assent, therefore, to the removal of the prisoner from one jail to another would not give a sheriff any authority to remove her in addition to what he now has by Pub. Sts., c. 220, § 2.

FEB. 8, 1898.

His Excellency the Governor and the Honorable Council.

GENTLEMEN: — The letter of Henry G. Cushing, sheriff of Middlesex County, which has been referred by your honorable body to this office, states that a woman was convicted of the crime of murder, and that her sentence was commuted by His Excellency the Governor and the Honorable Council to imprisonment for life in the Lowell jail. The letter further states that, for reasons stated therein, it is important that she be removed to the Cambridge jail, for the purpose of having a surgical operation performed, the facilities for such an operation at the latter jail being much superior to those where she is now confined. The letter further states that she consents to having the operation performed. The sheriff requests the assent of the Governor and Council to such removal.

Pub. Sts., c. 218, § 15, provides that "When a convict is pardoned or his punishment is commuted, the officer to whom the warrant for that purpose is issued shall, as soon as may be after executing the same, make return thereof under his hand, with his doings thereon, to the secretary's office; and he shall also file in the clerk's office of the court in which the offender was convicted an attested copy of the warrant and return, a brief abstract whereof the clerk shall subjoin to the record of the conviction and sentence."

The foregoing statute comprises the whole authority of the Governor and Council in the matter. When the warrant provided thereby to be issued by the Governor and Council is delivered to the officer, their jurisdiction in the matter is ended, and the prisoner is thereafterwards to be held as though committed by the court, and as though the sentence provided for by the order of commutation of the Governor and Council had been imposed by the court.

This being so, the assent of the Governor and Council would give the sheriff no authority in addition to that which he now has

by law; and the provisions of Pub. Sts., c. 220, § 2, to wit, that the sheriff may, at his discretion, remove prisoners from one jail to another for their health or safe keeping, apply to this case, notwithstanding the warrant of commutation issued by the Governor and Council.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Massachusetts school fund.—Truancy.

The failure of a school committee of a town to prosecute a parent for not sending his child to school is not a failure on the part of the town to comply with the laws relating to truancy; and the commissioners of the Massachusetts school fund have no authority to withhold from the town its share of said fund on that account.

FEB. 18, 1898.

Messrs. E. P. SHAW and FRANK A. HILL, *Commissioners.*

GENTLEMEN:—Pub. Sts., c. 43, relating to the Massachusetts school fund, provides in section 5 that no apportionment of the school fund shall be made to a city or town which has not “complied with the laws relating to truancy.”

Your letter of January 15 states the following case, which has arisen in one of the towns otherwise entitled to distribution of a portion of the school fund:—

“1. The parent of a child whose age is within the compulsory limits of eight and fourteen years declines to send him to school on the ground that the school-house is inconveniently distant, and that the school committee does not furnish transportation thereto for the child in question.”

“2. The school committee claims that the school-house is conveniently located for said child, and that he ought to walk to and from it.”

The question submitted by your letter is, whether the refusal or neglect of the school committee to enforce the attendance of the child in question, acting under the provisions of St. 1894, c. 498, § 1, constitutes such a failure to comply with the laws relating to truancy as to authorize your Board to withhold from the town its share of the school fund.

The case you state is not one of truancy. The refusal of the school committee to prosecute the parent for not sending his child to school is not a failure on the part of the town to comply with the laws relating to truancy.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Board of Education.— Scholarships.

The Board of Education has no authority to divide scholarships awarded by the Commonwealth into fractional parts, so that more than one student may receive benefit from a single scholarship.

FEB. 19, 1898.

C. B. TILLINGHAST, Esq., *Clerk, Board of Education.*

DEAR SIR:— Your letter of Dec. 3, 1897, requests my opinion upon the following question:—

“The Board of Education has at its disposal three scholarships in Amherst, three in Tufts and three in Williams colleges, under the provisions of chapter 154 of the Acts of 1859, and forty-three scholarships in the Massachusetts Institute of Technology and forty in the Worcester Polytechnic Institute, in accordance with the laws printed upon the appended sheet. Are these scholarships divisible? That is, can they be divided into fractional parts, and more than one student receive benefit from a single scholarship?”

The word scholarship, as used in the statutes, undoubtedly signifies a grant of money to a student to assist him in obtaining an education. If a scholarship is divided, and given to two students, two scholarships are thus created, and the number of scholarships is doubled. But the statutes fix the number of scholarships. Your question must, therefore, be answered in the negative.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Settlement.— Payment of taxes.— Pauper.

Provided a person has resided in any place in this State five years together after he became twenty-one years of age, and did not receive aid as a pauper during that time, it is immaterial, on the question of whether he has a settlement in that place, whether he paid all taxes duly assessed upon his poll or estate for any three years within that time, during the five years or after the five years had elapsed. If he has paid them, he has a settlement.

MARCH 5, 1898.

J. F. LEWIS, M.D., *Deputy Superintendent, Board of Lunacy and Charity.*

DEAR SIR:— Your letter of Jan. 22, 1898, requests my opinion upon the following facts stated therein:—

Philip Shannahan, aged sixty-five, a native of Ireland, married, and a laborer, arrived at Boston in 1887 and went thence directly to Salem. He lived in Salem from 1887 until he was committed to the State Almshouse at Tewksbury in December, 1897. He was an inmate of the Salem almshouse from Jan. 4 to Jan. 28, 1896. Up to that time he had paid no taxes; but in October,

1896, his poll tax for 1891 and 1892 was paid, and in the following November his poll tax for 1893, thus making three years taxes' in five years' residence.

The question submitted for my consideration is whether, on the foregoing facts, he has a legal settlement in Salem.

Pub. Sts., c. 83, § 1, cl. 5, provides that "Any person of the age of twenty-one years, who resides in any place within this state for five years together, and pays all state, county, city or town taxes, duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place." I do not understand that it is claimed that Shannahan gained a settlement in Salem, unless under the provisions of the foregoing statute.

I assume that his poll tax was duly assessed upon him, and was the only tax duly assessed upon him for the years 1891, 1892 and 1893; and that he has not reimbursed the city of Salem for his support in the Salem almshouse from Jan. 4 to Jan. 23, 1896.

The facts submitted bring the case within the express provisions of the statute above quoted, Shannahan being of the age of twenty-one years, having resided in Salem for five years together, and having paid all taxes assessed against him for three years of that time. He is therefore settled in Salem, unless the fact that he received relief as a pauper after the expiration of the five-years period of residence and before the payment of his three-years taxes creates an exception to the provisions of the statute. Such a construction, however, makes it necessary to incorporate into the statute an additional requirement, and one which is not authorized upon consideration of the language itself.

The statutes of Massachusetts relating to the settlement of paupers are arbitrary regulations, founded upon considerations of general convenience, and have no necessary relation to principles of natural justice or contract rights. In construing their provisions, little assistance can be drawn from the consideration of general principles of equity. As was said by Mr. Justice Lord, in *Plymouth v. Wareham*, 126 Mass. 475, 477: "The liability of a town (for the support of paupers) is a strict statute liability, to be fixed by positive rule. The statutes upon the subject are in no sense remedial, and are not to be modified or enlarged by construction or by any apparent equities, and nothing is to be deemed to be within the spirit and meaning of the statutes which is not clearly expressed by their words." Applying this rule of construction to the present case, it is not difficult to reach the conclusion that Shannahan's settlement is in Salem.

Section 2 of the settlement statute does not in my opinion affect the question. That section provides (Pub. Sts., c. 83, § 2) that

“Nothing in the preceding section shall be construed to give any person the right to acquire a settlement or to be in process of acquiring a settlement while receiving relief as a pauper.” This section is merely declaratory of the rule previously laid down by the Supreme Judicial Court. It has been held by that court in many well-considered cases that a person cannot be said to be in process of acquiring a settlement by reason of a continued residence, if any part of such continuity is broken by reason of the fact that he received assistance as a pauper. The earliest case upon this subject was *East Sudbury v. Waltham*, 13 Mass. 460. The settlement in that case was claimed to be acquired under a statute requiring residence for ten years and payment of taxes for five years. It appeared that the person claiming the settlement had received assistance as a pauper during the ten years, and it was held that he had not gained a settlement in the plaintiff town. This rule was followed in *East Sudbury v. Sudbury*, 12 Pick. 1. In *West Newbury v. Bradford*, 3 Met. 428, where similar facts appeared, Chief Justice Shaw stated the reasons for the rule as follows: “Whilst receiving relief as a pauper, he is not in a condition to perform those duties of a resident inhabitant and efficient member of the community, which the law contemplates as the ground of his right to a settlement from ten years’ residence and payment of taxes for one-half of those years. The law supposes an ability to perform municipal duties which are inconsistent with the dependent condition of a pauper.” It will thus be seen that section 2 of the settlement law institutes no new principles concerning settlement laws, but was in affirmation of the rule already adopted by the Supreme Judicial Court. It is to be interpreted, therefore, in the light of those decisions and of the reason of the rule, as above stated.

So considered, it is obvious that the words of the section “in process of acquiring a settlement” refer to the period of five years’ residence. After the expiration of the five years and before the payment of the taxes, the individual cannot properly be said to be in process of acquiring a settlement. The word “process” implies continuity. The payment of taxes is an act that may be performed at any time, and cannot be said to be any part of the “process” referred to in the statute.

Moreover, if he is living in another town, he may even be in process of acquiring a settlement in the latter town. If, therefore, by having still the right at his election to fix his settlement in the former town, though not living there, by payment of his taxes there, he may be said to be “in process of acquiring a settlement” in the former town, it follows that he would therefore be in process

of acquiring a settlement in two towns. This could not have been the intention of the Legislature. *Boston v. Wells*, 14 Mass. 384.

The case of *Boston v. Amesbury*, 4 Met. 278, supports this construction. Settlement in that case was claimed under a statute which required a residence of ten years and the payment of taxes for five years, assessed during the ten years' residence. Taxes for the five years were paid, not only after the expiration of the period of ten years, but after he had received support by confinement in a penal institution. The question there raised was, whether the defendant town could be held liable for expenses incurred after the expiration of residence but before the payment of taxes. The precise point now under consideration, therefore, was not before the court; but it was conceded by counsel and assumed by the court that the payment of the taxes, even though relief as a pauper had been received between the years of residence and the time of such payment, fixed a settlement of the pauper, the provisions of the statute having been complied with.

I am of opinion, therefore, that upon the facts stated the settlement of the person in question is in Salem.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General*.

Copies of records. — Fees. — District attorneys.

Clerks of courts are authorized to charge fees for copies of records furnished by them to district attorneys to be used in evidence in criminal cases, at the rate of twenty cents a page.

Except in cases where costs are paid by the defendant, however, the money may be charged to the county by the district attorneys, and in every case must be paid to the county by the clerks.

MARCH 10, 1898.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts*.

DEAR SIR: — Your letter of March 3 requests my opinion upon the following questions, to wit: —

“ 1. When copies of criminal records are ordered by district attorneys for use in criminal trials, in the superior court, are either trial justices, justices of district courts without clerks, or clerks of district courts, furnishing copies of such records, entitled to receive from the county payment for such copies? ”

“ 2. If so, how much for each copy? ”

1. Pub. Sts., c. 199, § 5, provides that all written copies furnished by clerks shall be charged for at the rate of twenty cents a page. This does not include copies which they are required by law to make, such, for example, as the copies which are trans-

mitted when a case goes from an inferior court to the superior court by appeal. There is no statute which requires clerks to furnish copies to district attorneys for use as evidence in criminal cases; and I know of no reason why district attorneys should be exempt from the provisions of section 5, above referred to, requiring copies to be paid for at the rate of twenty cents a page.

In practice, however, it is not usually important that the charge be made. The district attorney has the right to tax the costs of trials to the county. Moreover, all fees received by clerks must be paid to the treasury. It follows that the money withdrawn from the treasury upon the certificate of the district attorney is paid to the clerk, who, in turn, repays it to the treasury. In case the sentence of the court should include the payment of costs by the defendant, it would be otherwise; and in such cases the expense of copies used at the trial could be properly charged to the defendant, and paid over to the clerk.

In courts without a clerk, the statutes relating to clerks are applicable to clerical work performed or required to be performed by the justices. Pub. Sts., c. 154, § 27.

2. The statute fixes the amount of the fee.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Construction of statutes, — killing of deer.

Pub. Sts., c. 92, § 8, was amended by St. 1882, c. 199; and Pub. Sts., c. 92, was expressly repealed by St. 1886, c. 276; but St. 1882, c. 199, was not repealed thereby.

St. 1882, c. 199, prohibits the killing of deer at any time excepting Tuesdays, Wednesdays, Thursdays and Fridays in the month of November.

MARCH 11, 1898.

Hon. JOHN C. HAMMOND, *District Attorney.*

DEAR SIR:— Your letter of March 9 requests my opinion upon the question whether St. 1882, c. 199, has been repealed by St. 1886, c. 276. The latter statute expressly repeals Pub. Sts., c. 92; and St. 1882, c. 199, to which your inquiry relates, is an act amending one section of the repealed chapter.

Pub. Sts., c. 92, is an act relating to the preservation of certain birds and other animals. It contains twelve sections. Section 8 prohibits the killing of deer between the first day of December and the first day of November in every year.

St. 1882, c. 199, provides that "Section 8 of chapter 92 of the Public Statutes is amended so as to read as follows." Then follows a redraft of the section prohibiting the killing of deer at any

time excepting Tuesdays, Wednesdays, Thursdays and Fridays in the month of November. Other provisions of the amended section, particularly those relating to the penalty to be imposed, differ materially from section 8 in the Public Statutes.

St. 1886, c. 276, is "An act for the better preservation of birds and game." By section 11, as before stated, chapter 92 of the Public Statutes is expressly repealed. No section of the statute of 1886 relates to the preservation of deer, although most if not all the birds and game provided for in the Public Statutes are protected under it. If, therefore, the repeal of Pub. Sts., c. 92, carries with it the repeal of St. 1882, c. 199, it follows that the killing of deer in this Commonwealth is no longer unlawful at any time.

I do not think this was the intention of the Legislature, nor that the statute is to be so construed. This is particularly shown by the repealing clause of St. 1886, c. 276, which, in addition to repealing the game law in the Public Statutes, also repealed St. 1883, c. 36, which was an act amending section 6 of said chapter 92. If the contention that the repeal of chapter 92 carried with it the repeal of St. 1882, c. 199, amending section 8 of that chapter, then it would not have been necessary to have referred specifically to St. 1883, c. 36, amending another section of the Public Statutes. This is not to be presumed. On the contrary, it is rather to be presumed that, by specifying that one amendment should be repealed, it was intended that the other amendment should not be repealed.

This construction, moreover, concurs with the general rule for the construction of statutes. "Where an act or a portion of an act is amended so as to read in a prescribed way, it has been said that the section amended is entirely repealed and obliterated thereby." Endlich on Statutes, § 196.

The same rule is stated in *Com. v. Kenneson*, 143 Mass. 418. This being so, Pub. Sts., c. 92, § 8, was repealed by St. 1882, c. 199, and the latter statute was substituted therefor and became an independent statute. It follows that the repeal of Pub. Sts., c. 92, did not operate to repeal St. 1882, c. 199.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Town boundaries. — Perambulations of selectmen. — Bound stones.

Town boundaries can be fixed only by statute, but where statutes defining them are uncertain or ambiguous, resort may be had to other evidence, such as records of perambulations by selectmen, bound stones, and subsequent acts of the Legislature referring to parts of the original boundary line, to ascertain the true line intended by the Legislature.

MARCH 11, 1898.

DESMOND FITZGERALD, *Chairman, Topographical Survey Commission.*

DEAR SIR:— Some general considerations relating to town boundaries will assist not only in answering the specific inquiries in your letter, but in the determination of cases as they may hereafter arise in your work.

Town boundaries can be fixed only by statute. No agreements between towns or their officers, by perambulation or otherwise, are effectual to alter or vary lines established by statute.

It often happens, however, that the statutes defining town boundaries, especially the older ones, are uncertain or ambiguous. It may also happen that the line is described in general terms, and that reference must be had to facts existing at the time of the enactment of the statute to ascertain the intention of the Legislature. The statute referred to in your letter illustrates this fact. The order in council passed March 12, 1712, setting off Lexington from Cambridge, describes a line which cannot be traced excepting by knowledge of extraneous facts. It recites that for more than twenty years the farmers, "dwelling on a certain tract of out-lands, . . . obtained leave from the General Court, with approbation of the town, to be a hamlet or separate precinct, and were set off by a line, to wit:—beginning at the first run of water or swampy place, over which is a kind of bridge in the way or road on the southerly side of Francis Whitmore's house, towards the town of Cambridge aforesaid." Thence it runs "across the neck of land lying between Woburn line and that of Watertown side, upon a south-west and north-east course." This description contains scarcely more than a presumption that the boundary line which had been so set off by farmers twenty years before, and which was adopted in the division of the towns, is a straight line. It is probable that the line followed existing farm boundaries, and was therefore not a straight line. The words of the statute leave it at least uncertain whether a straight line was intended.

In such a case, and in all cases where the statute is ambiguous or uncertain, recourse may be had to other evidence for ascertaining the true line intended by the Legislature. The principal evidence so resorted to is that afforded by perambulations and bound

stones or monuments.. By St. 1785, c. 75, the Legislature provided: "That the bounds of all townships shall be, and remain as heretofore granted, settled and established. And to prevent an interference of jurisdiction, the lines between towns shall be run, and the marks renewed within three years from the last day of March instant, and once every five years forever after, by two or more of the selectmen of each town, or such other persons as they shall in writing appoint, to run and renew the same; and their proceedings, after every such renewal of boundaries, shall be recorded in the respective town books." Periodical perambulations of town lines by the selectmen of the adjacent towns have been required by successive acts since that time. St. 1827, c. 117, § 1, further provided for the erection by the selectmen of adjacent towns, at their joint expense, of permanent monuments to designate their respective boundaries at the angles; and such is the law to-day.

Neither these perambulations nor the bound stones so provided to be erected can control or alter the bounds between towns as fixed by statute. *Com. v. Heffron*, 102 Mass. 148. But in cases where the true boundary is uncertain, or the words of the statute fixing the boundaries between towns is ambiguous, such perambulations and bound stones may be resorted to as evidence of the true boundary. As was said by Mr. Justice Morton, in *Freeman v. Kenney*, 15 Pick. 44, 46, "When perambulations are duly made and recorded, they are not merely *prima facie*, but very high and strong evidence." It is also said by Mr. Justice Gray, in *Com. v. Heffron*, 102 Mass. 148, 151, that "perambulations are competent and strong evidence of the location of the lines."

Perambulations and monuments, however, are not the only evidence. Subsequent acts of the Legislature referring to the same subject may be considered as declaratory of the intent contained in the original act, especially where the act itself was ambiguous or uncertain.

Applying these principles to the specific case stated in your letter, you will have, I think, little difficulty in coming to the conclusion that the course referred to by the council of 1712 was not a straight line, but was an adoption of the farmers' line run out to correspond with farm boundaries, twenty years before that time. All the perambulations in existence follow a line which departs materially from a straight course. The perambulations also all agree. All existing monuments correspond to such perambulations.

Moreover, in the incorporation of Winchester, which was bounded by a portion of the original line between Lexington

and Arlington, the Legislature adopted the line fixed by the perambulations, which in that portion was very far from the straight line between the termini. St. 1850, c. 255. In the act incorporating the town of Belmont (St. 1859, c. 109), the line fixed between that town and Lexington, and which was also a portion of the old line, was a departure from what would have been the original line, assuming that it was straight.

The perambulations and monuments are all consistent, and are not inconsistent with the original act of 1712, unless that established a straight line. In view of this fact, and inasmuch as the Legislature has twice adopted the line of perambulations as the true line for a portion of the course, there remains no good reason for supposing that the remainder of the course, to wit, the portion of the original line which now bounds the towns of Arlington and Lexington, is a straight line, or that it follows a straight course between the original termini. On the contrary, all the evidence tends to show that the line fixed by the perambulations should be adopted by you as the true line.

Your letter contains some general inquiries touching your duties in ascertaining town boundaries, illustrating your difficulties by a statement of the questions involved in ascertaining the line between Arlington and Lexington. In answering the specific inquiry I have sufficiently stated the general rule governing the performance of your duty, so far that it appears to be unnecessary further to dwell in this communication upon the general questions contained in your letter.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Board of Lunacy and Charity.—Insane criminals.—Transfer.

St. 1895, c. 390, authorizes the State Board of Lunacy and Charity to transfer insane criminals from the State lunatic hospitals to the State Asylum for Insane Criminals at Bridgewater.

It is immaterial that the mittimus committing them to the lunatic hospitals recite that they are to be detained there until further order of the court or any justice thereof. After they have been received in a State lunatic hospital they come within the jurisdiction of the Board, and it may remove them at its pleasure from one hospital to another.

MARCH 11, 1898.

CHARLES E. WOODBURY, M.D., *Inspector of Institutions.*

DEAR SIR:—Your letter of January 12 requires my opinion upon the question whether the State Board of Lunacy and Charity has authority to transfer from the State lunatic hospitals to the

State Asylum for Insane Criminals at Bridgewater certain criminal insane patients. The letter states that there is some uncertainty as to the authority of the Board, because of the fact that criminal insane patients are in certain cases sent by order of the court to a specific lunatic hospital, to be detained there "until further order of said court or any of the justices thereof."

St. 1895, c. 390, provides, in section 5, that "The State Board of Lunacy and Charity is hereby authorized to transfer to and from the State lunatic hospitals and the Asylum for Insane Criminals any of the description of persons mentioned in this act, whenever, in its judgment, such transfer will insure a better classification of insane criminals." The persons mentioned in the act include insane male persons specified in Pub. Sts., c. 222, §§ 10, 12 and 14, and St. 1895, c. 320; also Pub. Sts., c. 214, §§ 16, 19 and 20, and c. 213, § 15. Both of the persons referred to in your letter come within the class referred to in Pub. Sts., c. 214, § 16, and may, therefore, under the authority of St. 1895, c. 390, be removed by the Board to the State Asylum for Insane Criminals.

The fact that the order of commitment specified a lunatic hospital does not take away or diminish the authority of the Board. Pub. Sts., c. 214, § 16, provides that the court may cause persons held on indictment who are found to be insane "to be removed to one of the State lunatic hospitals for such a term and under such limitations as it may direct." The mittimus to the sheriff must therefore specify a hospital to which the person may be taken and which must receive him. He then comes within the jurisdiction of the Board, and may be removed, notwithstanding the original order of commitment. The undoubted purpose of the statute is to place persons committed for insanity under the control of the Board, with authority to remove them at its pleasure from one asylum to another. Similar provisions apply to persons sentenced to the State Prison, reformatory or to a house of correction or jail. The mittimus must specify the institution to which the commitment is made, and then the authority of the Prison Commissioners to remove the prisoner from one institution to another is practically unlimited.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Money deposited with treasurer under St. 1863, c. 254. — Interest. — Construction of statute.

St. 1863, c. 254, § 4, is to be construed liberally in favor of soldiers in considering questions relating to the payment of interest on bounty money left by them in the treasury; and if there is sufficient evidence of an assignment to the treasurer, interest should be paid on the money from the time it became due.

Bounty money accruing to the widows or legal heirs of soldiers after their death could not be assigned by the soldiers; and, if it was not assigned to the treasurer by the widows or heirs, it does not draw interest.

APRIL 7, 1898.

Hon. JOHN W. KIMBALL, *Auditor.*

DEAR SIR: — Your letter of March 17 requests my opinion as to the proper computation of interest on moneys deposited with the treasurer of the Commonwealth under the provisions of St. 1863, c. 254, § 4. The section is as follows: "Any volunteer who is or shall be entitled to the bounty or pay provided in this act, may assign to the treasurer and receiver-general the whole or any part of such bounty or pay, which shall be by him received, and distributed in the manner provided for in the sixty-second chapter of the acts of the year eighteen hundred and sixty-two, and said bounty shall be held subject to the order of the volunteer, and the sum remaining in the hands of the treasurer shall draw interest at the rate of five per cent. per annum."

It is impracticable to deal with all questions of interest arising upon this section, and I prefer to consider the specific case submitted by way of illustration. One Bartlett enlisted in November, 1863, and became entitled to bounty under the provisions of St. 1863, c. 254, to wit: to receive the sum of fifty dollars upon his enlistment, and twenty dollars monthly so long as he should remain in the service; and if he should die in the service, twenty dollars a month for six months after his death, to be paid to his widow, or, if he should leave no widow, to his lawful heirs. There is evidence from the records that he made an assignment of this bounty in some form to the treasurer, and that under such assignment the sum of \$223.99 was paid to the treasurer, and stands in the treasury to the credit of the soldier to-day. There was also due him at the time of his death the sum of \$127, which had not been deposited with the treasurer. He was taken prisoner by the Confederates, and died in prison. The said sum of \$127 was the amount of bounty which accrued to him while in prison.

Your question relates to the three sums which are due, to wit: first, the sum of \$223.99, which was under his assignment duly deposited in the treasury; second, the sum of \$127, accruing to

him while in prison ; and, third, the sum of \$120, being the amount of bounty for six months after his death.

At the time of the enactment of the statute in question the Commonwealth was raising large sums of money for the equipment of soldiers for the war of the rebellion. Section 7 of the same act authorized the treasurer to borrow from individuals and institutions such sums of money, at a rate of interest not exceeding five per cent., as would be necessary to carry out the provisions of the act. Section 4 invited the soldiers themselves to whom bounty accrued to loan the amount of their bounty to the Commonwealth upon the same rate of interest. The provisions of this statute, so far as they apply to loans by soldiers, are, in my opinion, to be construed liberally, and when doubts arise they are, if consistent with the statute, to be resolved in favor of the soldier. The Commonwealth borrowed and used the money of the soldiers, and should pay the debt in full. No technical defence should be set up against their claim.

As to the sum of \$223.99, which was unquestionably assigned by the soldier, I am clearly of the opinion that interest accrued on the money as soon as it was due the soldier. It was payable monthly, and when the monthly bounty was due, and remained in the hands of the treasurer under the assignment, it at once began to draw interest, continued to draw interest, and still draws interest until it is paid. The words in the section, "the sum remaining in the hands of the treasurer shall draw interest at the rate of five per cent. per annum," are obviously to be interpreted as a sum of money due the soldier and loaned by him to the Commonwealth.

As to the sum of \$127, the evidence of assignment is not so specific. It is not my duty to advise you whether, as matter of fact, the evidence of assignment is sufficient ; but I may at least say that, as you stated the facts to me, I am of opinion that you are authorized, as matter of law, to find that this portion of his bounty was also assigned, and, being so assigned, was loaned to the Commonwealth ; and, having since been held by the Commonwealth, is liable to interest for the same time as the sum of \$223.99 above referred to.

As to the bounty accruing after his death, the case stands differently. He did not and could not assign the whole or any portion of the bounty accruing to his widow or legal heirs after his death. It was payable to her or to them, and not to his legal representatives, who alone could recognize or be bound by his contract. It is not pretended that any assignment was made either by his widow or his legal heirs. There was, therefore, no contract by which the

Commonwealth became legally or morally bound to pay interest on this sum. It was payable as it accrued, and would have been paid if demand therefor had been made. Unless the evidence should show an assignment by his widow, or, in case there was no widow, by his legal heirs, interest is not payable thereon. I do not understand that any such assignment was made.

This disposes of the specific case stated in your letter. It is quite likely that the considerations I have stated as applicable to the case may assist you in dealing with other cases as they arise.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Cattle afflicted with tuberculosis.—Condemnation and killing.—Compensation.

The language of St. 1895, c. 496, § 10, providing that when cattle condemned as afflicted with the disease of tuberculosis, are killed, full value thereof at the time of condemnation, not exceeding the sum of sixty dollars for any one animal, shall be paid, is to be construed as meaning the full value of the animal for purposes of sale at the time of condemnation, considering the fact that it is diseased, provided that not more than sixty dollars shall be paid for any animal.

It is therefore unnecessary for the Cattle Commissioners to cause a post-mortem examination to be made upon each animal killed for the purpose of determining how much it is afflicted before agreeing upon the value of the animal for the purpose of payment.

APRIL 7, 1898.

AUSTIN PETERS, *Chairman, Board of Cattle Commissioners.*

DEAR SIR:—Your letter of February 7 states that some criticism has been made touching the method of procedure adopted by your Board in paying for cattle condemned and killed under the provisions of St. 1895, c. 496, § 10.

The language of the statute as amended is as follows: "When the board of cattle commissioners or any of its members, by an examination of a case of contagious disease among domestic animals, becomes satisfied that the public good requires it, such board or commissioner shall cause such animal or animals afflicted therewith to be securely isolated, or shall cause it or them to be killed without appraisal or payment. . . . If it shall subsequently appear, upon post-mortem examination or otherwise, that such animal was free from the disease for which it was condemned, a reasonable sum therefor shall be paid to the owner thereof by the Commonwealth: *provided, however,* that whenever any cattle condemned as afflicted with the disease of tuberculosis are killed under the provisions of this section the full value thereof at the time of condemnation not exceeding the sum of sixty dollars for any one

animal, shall be paid to the owner thereof out of the treasury of the Commonwealth if such animal has been owned within the state six months continuously prior to its being killed." St. 1895, c. 496, § 11, provides the method of ascertaining the compensation to be paid to an owner who is entitled to compensation for an animal destroyed. Under its provisions the commissioners and the owner may agree. If they cannot agree, the question shall be determined by arbitrators. Further provisions give the right to the party aggrieved by the decision of the arbitrators to have his damages assessed by a jury.

Your letter states that, in carrying out the provisions of the statutes, it has been the practice of the commission to ascertain by agreement or appraisal, before causing the condemned animal to be killed, the amount to be paid to the owner; and that this method of procedure is criticised on the ground that the Board should not determine the value either by agreement or appraisal until after a post-mortem examination.

There is nothing in the statute which requires a post-mortem examination of an animal killed before agreeing upon its value or ascertaining the same by appraisal; and I do not think a fair interpretation of the law imposes such a requirement upon your Board. I am of opinion that the procedure adopted by you conforms to the spirit and intent of the law, and that the criticism which has been made cannot be sustained.

In construing the statute, it is to be remembered that it was enacted in the exercise of the so-called police powers of the Legislature. The Commonwealth, in the exercise of this power, has authority to destroy animals afflicted with contagious diseases without awarding any compensation whatever. As to all diseases, excepting tuberculosis, the statute makes no provision for compensation; but expressly provides that they are to be killed without appraisal or payment. *Miller v. Horton*, 152 Mass. 540.

In view, however, of the prevalence of tuberculosis, and the large number of cattle required to be killed on account of the existence of that disease, the Legislature has seen fit by various successive statutes to award partial compensation in certain cases to the owners of cattle afflicted with tuberculosis and killed for that reason. The original statute (St. 1894, c. 491, § 45) provided for the payment to the owner of one-half of the value of the animal for food or milk purposes, and without taking into consideration the existence of the disease. The Legislature of 1895 proposed to amend this statute by providing for the payment of the full value instead of one-half the value for food or milk purposes, and also without taking into consideration the existence of

the disease. In an opinion given to the Governor May 22, 1895, the Attorney-General advised him that the proposed legislation would be unconstitutional. Thereupon the bill was re-drawn, and the present proviso substituted. The words "value for food or milk purposes" were stricken out, and also the words "without taking into consideration the existence of the disease." As the law now stands, a sum of money in the nature of compensation is to be paid to owners of cattle if the cattle have been owned continuously within the State for six months prior to the killing. The sum paid is to be the full value of the cow at the time of condemnation, but not to exceed the sum of sixty dollars.

This is not a proviso for full compensation, because the maximum amount to be paid is sixty dollars, which is less than the full value of some cattle. Nor can it be said to be a compensation representing the value of the animal for food or milk purposes. Other provisions of the same statute make it unlawful to sell the products or the carcass of an animal afflicted with tuberculosis. It therefore must be regarded as a sum of money representing the value of the animal for purposes of sale at the time of condemnation, considering the fact that it is diseased. It does not follow that, because scientific tests reveal the existence of tuberculosis, the animal has no market value. It may still be saleable, and the price which could be obtained for it would depend upon how far the disease had affected its general appearance and condition. It is plainly this market value which the Legislature has seen fit to award to the owner when the animal killed has been owned by him within the State for more than six months.

It is obviously not necessary under the statute to await the results of a post-mortem examination before determining the question of the existence of tuberculosis. It is true that in another part of the same section provision is made for reasonable compensation to the owner of the animal in case a post-mortem examination should demonstrate that the animal killed was free from disease. This, however, is an independent provision, and is not to be considered in connection with the proviso in question, requiring payment of an arbitrary sum to certain owners of cattle condemned by the commission as diseased. This payment is to be made whenever cattle are "condemned as afflicted with the disease of tuberculosis." For the purposes of settlement under this proviso the judgment of the commission that the animal is diseased is to be taken as conclusive. A post-mortem examination would not add any essential fact to the determination of the amount to be paid to the owner. The extent to which the disease had progressed before killing is not of importance, excepting so far as it

had affected the appearance and condition of the animal for the purpose of sale. If the post-mortem examination should settle that the commission were mistaken, the owner would have a right to compensation under other provisions of the statute, unless he had been settled with at the time of condemnation under the proviso in question.

In other words, the scheme contemplated by the statute calls for a determination by the commission of the existence of tuberculosis before condemnation. When that fact has been ascertained and declared, it becomes the duty of the commission to condemn and kill the animal. Upon such condemnation it is the duty of the commission to pay a sum of money which represents the market value of the animal killed to the owner, if the animal has been owned continuously for six months within the State. The amount to be paid is computed upon the assumption that the animal is diseased, and a post-mortem examination would determine nothing more. The only purpose of an autopsy is to ascertain if the commission was mistaken in its opinion; in which case the owner is entitled to full and unlimited compensation, without regard to the length of ownership by him.

It is, therefore, unnecessary to wait for the results of an autopsy before agreeing, or ascertaining by appraisal, for the purpose of payment, upon the value of an animal which the commission has adjudged to be diseased and has ordered to be killed.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Money left by deceased paupers.—Public administrator.

It is the duty of superintendents of insane asylums having money left with them by patients dying in the hospital who were public charges, if there are no relatives to claim it, and it is not legally claimed under Pub. Sts., c. 85, § 32, to turn it over to a public administrator.

APRIL 7, 1898.

EDWARD FRENCH, M.D., *Superintendent, Medfield Insane Asylum.*

DEAR SIR:—Your letter of March 18 states that small sums of money, less than twenty dollars in amount, have from time to time been left in your hands by patients dying in the hospital who were public charges, supported either by towns or by the State; that no near relatives have been found to claim the money; and you request my advice as to your proper course in relation to the same.

Pub. Sts., c. 131, § 18, provides that when the total property of an intestate which has come into the possession or control of a public administrator is of value less than twenty dollars, he shall reduce the property into money, not taking administration thereon,

and shall deposit such money, first deducting his reasonable expenses and charges, with the treasurer of the Commonwealth, who shall receive and hold it for the benefit of any persons who may have legal claims thereon.

This provision determines your duty in the premises. When there are no relatives to claim the money (and it is not claimed by the overseers of the poor of a town chargeable with the pauper's support, under Pub. Sts., c. 85, § 32), it is to be paid to a public administrator, to be by him disposed of in accordance with the provisions of that section.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Petition for State highway. — Selectmen. — Withdrawal of petition.

When the selectmen of a town have filed a petition with the Highway Commission, recommending that a road be laid out as a State highway, their jurisdiction is ended, and the matter is within the exclusive jurisdiction of the commission; and a new board of selectmen, even though acting under a vote of the town, has no right to withdraw the petition.

APRIL 15, 1898.

A. B. FLETCHER, *Secretary, Massachusetts Highway Commission.*

DEAR SIR: — Your letter of April 1 requests my opinion on the following question: "If the board of selectmen, acting under St. 1894, c. 497, § 1, file a petition with the commission for a State highway, and no action was taken on the matter by the commission other than placing the petition on file, can a new board of selectmen, acting under a vote of the town, withdraw the petition?"

Section 1 of the statute referred to is as follows: "Whenever the county commissioners of a county, or the mayor and aldermen of a city, or the selectmen of a town, adjudge that the public necessity and convenience require that the Commonwealth take charge of a new or an existing road as a highway, in whole or in part, in that county, city or town, they may apply by a petition in writing to the Massachusetts Highway Commission, stating the road they recommend, together with a plan and profile of the same."

Section 2 of the statute, as amended by St. 1897, c. 355, § 1, provides that: "Said Highway Commission shall consider such petition and determine what the public necessity and convenience require in the premises, and, if they deem that the highway should be laid out or taken charge of by the Commonwealth, shall file a certified copy of a plan thereof in the office of the county commissioners of the county in which the petitioners reside, with the petition therefor and a certificate that they have laid out and taken charge of said highway in accordance with said plan."

The obvious construction to be given to these sections, taken together, is that when the selectmen of a town have once adjudged that the public necessity and convenience require the Commonwealth to take charge of a new or existing road as a highway, and have filed a petition with the commission, their jurisdiction in the matter has ended. The matter is then within the exclusive jurisdiction of the Highway Commission. The selectmen of the town are the judges in the first instance; but, once having exercised their judgment, the question of public necessity and convenience devolves upon the Highway Commission, and neither the board of selectmen nor a subsequent board has any further voice in the matter.

I am of opinion, therefore, that a new board of selectmen, even though acting under a vote of the town, has no right to withdraw the petition filed by a former board.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Savings bank. — Guaranty fund. — Equalizing dividends.

St. 1894, c. 317, § 25, requires a savings bank to reserve from its net profits for a guaranty fund until that fund amounts to five per cent. of the whole amount of its deposits; and if its guaranty fund does not amount to five per cent. of its deposits, it has no right to use any portion of that fund to meet losses, and thereby equalize dividends.

APRIL 15, 1898.

Hon. STARKES WHITON, *Chairman, Board of Savings Bank Commissioners.*

DEAR SIR:— Your letter of January 28 requires the opinion of the Attorney-General upon the question whether a savings bank, whose guaranty fund does not amount to five per cent. of its deposits, may charge a loss to that fund before the full amount of five per cent. is reached.

The statute in question is St. 1894, c. 317, § 25, which is as follows: "Every such corporation shall, at the time of making each semi-annual dividend, reserve as a guaranty fund, from the net profits which have accumulated during the six months then next preceding, not less than one-eighth nor more than one-fourth of one per cent. of the whole amount of deposits, until such fund amounts to five per cent. of the whole amount of deposits, which fund shall be thereafter maintained and held to meet losses in its business from depreciation of its securities, or otherwise."

The obvious intent of the Legislature in this enactment is to require savings banks to reserve not less than one-eighth or more than one-fourth of one per cent. of the deposits semi-annually until the amount of the reserve so set aside amounts to five per cent. of

the whole amount of deposits. This is clearly shown by reference to sections 26 and 27 of the same chapter. Section 26 provides, in substance, for a division at stated periods of the income of the corporation, "after a deduction of all reasonable expenses incurred in the management thereof, and the amounts reserved for the guaranty fund." Section 27 prohibits the making of a dividend unless the profits "over and above the sum to be added to the guaranty fund" amount to one and one-half per cent. of the deposits.

These sections plainly require a deduction, before making a division, of the amount required by law to be set aside for the guaranty fund. If the guaranty fund could be used for the payment of losses during the six months preceding, and thereby to increase the amount of the dividend, the result would be the same as though no reservation were made for the guaranty fund. The amount reserved would first be charged against the profits and then paid out to increase the profits. This would render the law nugatory.

The purpose of accumulating a guaranty fund is to insure the safety of depositors by keeping on hand, over and above the ordinary profits of the bank, five per cent. of the whole amount of deposits. In order that the burden may not fall too heavily upon depositors, the accumulation is to be made gradually. But the intention of the statute is that the accumulation be constant, and that no less than one-eighth of one per cent. be added for each six months until the whole sum of five per cent. is reached, which sum is to be maintained.

A recent statute (St. 1896, c. 231) assists and confirms this view of the intention of the Legislature. Until the later statute was enacted the amount which banks were allowed to hold in addition to the guaranty fund could not exceed one per cent. of the deposits, and when the accumulated profits reached that percentage an extra dividend must be declared (St. 1894, c. 317, § 28). By the statute of 1896 savings banks may accumulate eleven per cent. of their deposits before making an extra dividend. This gives them an opportunity to hold five per cent. of the deposits in addition to the guaranty fund, for the purpose of maintaining and equalizing their dividends, without resorting to the guaranty fund while the same is in process of accumulation.

I am of opinion, therefore, that a savings bank may not use, for the purpose of meeting losses, any portion of the guaranty fund that it is required to accumulate until such fund amounts to five per cent. of its deposits.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Bombardment. — Insurance against.

Insurance companies authorized to do business in Massachusetts have no authority to insure against the destruction of property by bombardment.*

APRIL 18, 1898.

Hon. FREDERICK L. CUTTING, *Insurance Commissioner.*

DEAR SIR:— Your letter of April 4 requires my opinion upon the authority of insurance companies doing business in Massachusetts to insure against the destruction of property by bombardment, or other acts of the public enemy.

Insurance companies authorized to do business in Massachusetts are prohibited from making contracts of insurance against loss of property by acts of the public enemy. The Massachusetts standard policy is a form of contract authorized by St. 1894, c. 522, § 60, for insurance against loss by fire. It specifically excepts loss by fire originating from "invasion, foreign enemies, civil commotion, riots, or any military or usurped power whatever." Clause 7 of said section, however, authorizes a company to attach a rider to the standard policy, containing provisions "adding to or modifying those contained in the standard form." By such a rider an insurance company may waive the exception against loss by fire resulting from foreign enemies, etc. But even then the policy would not cover loss or damage by bombardment or other act of the public enemy, unless fire ensued; and then only such part of the loss as would be due to the fire.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Prisoners sentenced to State Prison by United States courts. — Authority of Commissioners of Prisons to release on parole.

The Commissioners of Prisons have no such authority to release prisoners from the State Prison, sentenced there by the United States courts, as they have under the parole laws to release prisoners sentenced there by the State courts.

APRIL 18, 1898.

J. WARREN BAILEY, Esq., *Secretary, Commissioners of Prisons.*

DEAR SIR:— Your letter of April 7 requires my opinion upon the question whether your Board has the same authority to release prisoners from the State Prison, sentenced by the United States courts, as it has to release prisoners who have been sentenced by the courts of this Commonwealth. Your letter refers specifically to St. 1894, c. 440, St. 1895, c. 252, and St. 1897, c. 206.

* In consequence of this opinion, St. 1898, c. 380, § 1, was enacted.

The statutes referred to are what are called the "parole" laws. As finally amended, they provide that the Commissioners of Prisons, when they are satisfied that a person held in the State Prison upon his first sentence has reformed, may, under certain conditions, issue to him a permit to be at liberty during the remainder of his term, upon such terms and conditions as they deem best. This permit can be issued after two-thirds of the term of sentence has expired.

United States Rev. Sts., § 5539, is as follows: "Whenever any criminal, convicted of any offence against the United States, is imprisoned in the jail or penitentiary of any State or Territory, such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which such jail or penitentiary is situated; and while so confined therein shall be exclusively under the control of the officers having charge of the same, under the laws of such State or Territory."

From the earliest times statutes have existed in this State authorizing the reception of United States prisoners in our jails, houses of correction and in the State Prison. When prisoners are so committed by sentence from the federal courts they are, under the provisions of the section quoted, subject to the same discipline and treatment as prisoners sentenced by the courts of the State. I am of opinion, however, that this section does not authorize the commissioners to discharge them before the expiration of the time for which they are sentenced. The words "discipline" and "treatment" do not refer to the term of sentence, but to the conduct and management of prisoners while in confinement.

Under the provisions of the United States Rev. Sts. § 5543 (first enacted in 1867), prisoners sentenced by United States courts are entitled to the deduction of one month in each year from the term of their sentence for good behavior. By section 5544 this provision for deduction does not apply to prisoners where credits for good behavior are allowed under State laws. In such cases United States prisoners "shall be entitled to the same rule of credits for good behavior applicable to other prisoners in the same jail or penitentiary." This statute thus authorizes an abridgment of the term of sentence of a prisoner sentenced by the federal courts.

It differs, however, essentially from the provisions of the parole law. The latter authorizes discharge in the discretion of the Commissioners of Prisons at any time after two-thirds of the sentence has expired, with authority in the commissioners to recommit the prisoner if he violates the terms of his parole. Under the credit system a fixed number of days is deducted for each month of

actual good behavior. It cannot be said that indefinite release of a prisoner at the discretion of the Commissioners of Prisons is within the intention of the section of the United States statute above quoted, authorizing specific deductions to be made from the term of sentence for good behavior.

I am of opinion, therefore, that the statutes authorizing the Commissioners of Prisons to release prisoners on parole are not applicable to persons sentenced to the penal institutions of Massachusetts by the courts of the United States.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Medfield Insane Asylum. — Authority of trustees to purchase land.

The trustees of the Medfield Insane Asylum have no authority to purchase land without a special act of the Legislature appropriating money for that purpose.

MAY 10, 1898.

Building Committee, Medfield Insane Asylum.

GENTLEMEN: — I have your letter of the 7th, inquiring whether the trustees of the Medfield Insane Asylum have authority to purchase real estate without a special act of the Legislature.

The asylum was established by St. 1892, c. 425, and appropriations for its completion have been made by St. 1894, c. 391, St. 1895, c. 399, Resolves 1896, c. 41, and St. 1897, c. 205. These statutes relate only to the building of the asylum on land which had already been purchased by a special commission authorized by and acting under St. 1890, c. 445. Under that statute the governor was "authorized to appoint three persons as commissioners, with full power to purchase or bond, subject to the approval of the governor and council, suitable real estate . . . as a site for an asylum for the chronic insane." St. 1892, c. 425, recites that land had been purchased by virtue of this statute.

In my opinion these statutes and proceedings exhaust the authority of the trustees to purchase land. If, therefore, it is desired to purchase other land, it will be necessary to obtain a special act of the Legislature, appropriating money for that purpose.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Students of Harvard University.—Right to parade with firearms in public.

The governor of the Commonwealth is authorized by St. 1895, c. 465, § 6, to consent that the students of Harvard University drill and parade with firearms in public under the superintendence of their teachers.

Although military instruction is not compulsory in Harvard University, yet it is a designated course of study offered to all students, and may be counted toward a degree, and is therefore a “prescribed part of the course of instruction” within the meaning of the statute.

MAY 10, 1898.

His Excellency ROGER WOLCOTT, *Governor.*

DEAR SIR:—Your Excellency has desired my opinion upon the following question: St. 1895, c. 465, § 6, which forbids bodies of men from associating themselves together for drill or parade with firearms within this Commonwealth, contains the following proviso, to wit: “*provided, further,* that students in educational institutions where military science is a prescribed part of the course of instruction may, with the consent of the governor, drill and parade with firearms in public, under the superintendence of their teachers.”

The president of Harvard University requests the Governor to consent that the students of Harvard University drill and parade with firearms in public under the superintendence of their teachers.

The question arises upon the words “is a prescribed part of the course of instruction.” The president’s letter states that military instruction is not a compulsory study for all students, although it is a regularly designated course of study offered to all students in arts and science, by whom it may be counted towards the degree.

I am of the opinion that the university is within the proviso. It could not have been the intention of the Legislature that the study of military science, particularly in institutions of learning, where the courses of study are largely elective, should be compulsory. If that study is one of the elective courses open to its students, some of which courses must be taken to entitle them to a degree, it is “a prescribed part of the course of instruction,” within the meaning of the statute.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Insurance. — Nature of contract.

The essential element of insurance is that the insured receives indemnity from loss by reason of the happening of events without his control or the control of the insurer.

The contracts of "The Medical Alliance" and the "National Registry Company" are contracts of insurance.

The "Electrical Inspection and Maintenance Company" issues a contract by which for a consideration it agrees to make such repairs as are necessitated by the ordinary wear and tear of operating the machinery named in the contract. That is not a contract of insurance. The element of hazard is wanting.

If a physician contracts for his services for a fixed time for a fixed price, it is not insurance.

MAY 11, 1898.

Hon. FREDERICK L. CUTTING, *Insurance Commissioner.*

DEAR SIR:—I have received from you sundry requests, written and oral, for my opinion as to whether certain contracts referred to are contracts of insurance. The same general considerations apply to all the questions, and I will consider them together, referring hereafter in detail to each form of contract.

The nature of an insurance contract, both at common law and under the statutes of this Commonwealth, has been discussed in sundry opinions of the Attorney-General (see opinions under date Dec. 2, 1891, April 20, 1894, June 21, 1894, and June 15, 1896). I beg to refer to these opinions for a full discussion of the nature of insurance contracts.

By St. 1897, c. 66, § 1, an insurance contract is defined to be "an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the assured upon the destruction, loss or injury of something in which the other party has an interest." It is doubtful whether this statutory definition is anything more than a declaration of the common law definition of insurance. Mr. Justice Gray, in *Commonwealth v. Wetherbee*, 105 Mass. p. 160, defines insurance in very much the same terms. See also *Claflin v. United States Credit System Co.*, 165 Mass. 501. Mr. Justice Lawrence, in *Lucena v. Craufurd*, 2 Bos. & P. (N. R.) 300, 301, after quoting from Grotius, Pothier and Blackstone, says: "These definitions by writers of different countries are in effect the same, and amount to this, that insurance is a contract by which one party, in consideration of a price paid to him adequate to the risk, becomes security to the other that he shall not suffer loss, damage or prejudice by the happening of the perils specified to certain things which may be exposed to them. If this be the general nature of the contract of insurance, it follows that it is applicable to protect men against

uncertain events which may in any wise be of disadvantage to them ; not only those persons to whom positive loss may arise by such events, occasioning the deprivation of that which they may possess, but those also who, in consequence of such events, may have intercepted from them the advantage or profit which, but for such events, they would acquire according to the ordinary and probable course of things."

The essential element of insurance is that the insured receives indemnity from loss by reason of the happening of events without his control or the control of the insurer.

Applying these principles to the specific cases submitted, I find no difficulty in determining whether they are or are not contracts of insurance.

1. An association calling itself "The Medical Alliance" has issued a certificate in which, in consideration of weekly payments, it promises, first, that should the member be killed, or die suddenly, or be drowned, it will endeavor immediately to identify him or her, to notify his or her friends, and to take entire charge until they arrive or assume responsibility, limiting the expenditure in case of death to the sum of one hundred dollars ; and, second, should the holder of the certificate become insane or unconscious, or burned, paralyzed or falsely arrested, stricken by apoplexy or heart failure, overcome by heat or cold, or be unable to prove his or her identity under any circumstances, it will endeavor to furnish promptly the best medical or surgical aid, to identify him or her, notify his or her friends, and to take entire charge until they arrive or assume responsibility, and to continue to supply the holder of the certificate with medical aid and medicines until recovered or has been pronounced incurable ; the limit of expenditure under its terms being five dollars a week for a term of five weeks. This is a contract of insurance.

2. The "National Registry Company" receives applications for "registry and accident insurance." It then supplies the applicant with a policy of accident insurance issued by the Fidelity and Casualty Company of New York, and gives the applicant a pocketbook with a card bearing an identification number, in which the sum of twenty-five dollars is guaranteed in case of accident to be paid to the person holding the card for care, medical attendance, etc. Though not a written contract, it is no less a contract of insurance. Insurance contracts need not be in writing ; they may be oral. Upon the consideration of the payment of a sum of money by the holder of the card, the Bureau undertakes to render certain services and to guarantee the payment of a certain sum of money, in case of accident occurring to said holder.

3. The "Electrical Inspection and Maintenance Company" issues a contract purporting to bind the company, in consideration of a fixed sum, to inspect, repair and maintain the electrical machinery described in the application for contract, and to renew at its expense armatures, commutators, etc., and to keep the same in as good an operative condition as it is at the time the contract was made. It is specified that the contract applies only to repairs necessitated by the ordinary and usual operation of machinery, and does not apply to damage to property or person resulting from disarrangement or accident; and that the contract "shall in no way be considered as insurance of the machinery to be maintained."

This is not a contract of insurance. The element of hazard is wanting. It is an agreement to furnish such repairs as may be expected to be incidental to the operation of machinery. It is inevitable that electrical machinery will by the ordinary and usual wear and tear of operation require from time to time ordinary and necessary repairs. This contract is an agreement to furnish those repairs for a fixed sum. The only element of chance involved is the extent of the repairs which may be required. But in this, as in other matters, it is neither hazardous nor unusual to undertake continuing work, although somewhat indefinite in its amount, for a fixed sum. It does not differ from the ordinary contracts by which an attorney is annually retained by his client.

4. "If a physician, either by himself or as a representative of a conclave of physicians, agrees to furnish for a consideration medical or surgical aid and medicines to individuals in sickness or accident, would the agreement to do so be considered a contract of insurance?" This question stands upon the same principles as the last stated. A contract by a physician to furnish medical services for a fixed time and for a fixed price is not insurance.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

State House Commissioners.—Contracts in which Commonwealth is interested.—Proposals.—Advertising.

The State House Commissioners are not required to advertise for proposals for contracts under St. 1898, c. 395.

MAY 20, 1898.

WILLIAM ENDICOTT, Jr., Esq., *State House Construction Commissioner.*

DEAR SIR:—I am requested by a letter received from your architect to advise your Board whether it is necessary for the State House Commissioners to advertise for proposals for the work to be

done under St. 1898, c. 395, being "An act to provide for illuminating the dome and lantern of the State House, and for improvements on the State House grounds." The architect's letter further states that the work will involve an expenditure in all of about \$8,000, divided among four contractors.

There is no general statute requiring that proposals for contracts in which the Commonwealth is interested shall be advertised. Whenever the Legislature has seen fit to require proposals for such contracts to be advertised, it has been by special legislation. St. 1889, c. 394, providing for the building of the addition to the State House, required, in section 4, that proposals for work or material exceeding \$1,000 in value should be advertised for. That act, however, applied exclusively to the State House addition, and its provisions do not include contracts made under the statute now under consideration.

I am of opinion that the commissioners are not required to advertise for contracts under the act in question.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

The Industrial and Labor Union of New Bedford, Incorporated. — Charitable corporation, — expulsion of member.

The Industrial and Labor Union of New Bedford, Incorporated, a charitable corporation organized under Pub. Sts. c. 115, is not subject to St. 1888, c. 134, and there is no reason why it may not provide for the expulsion of a member without a vote of a majority of all the members.

MAY 21, 1898.

Hon. CHARLES ENDICOTT, *Commissioner of Corporations.*

DEAR SIR:— My opinion is required upon the question whether "The Industrial and Labor Union of New Bedford, Incorporated" is amenable to the provisions of St. 1888, c. 134, entitled "An Act to authorize the incorporation of labor and trade organizations."

The Agreement of Association of the corporation in question states that the incorporators associate themselves together with the intention of constituting a corporation according to the provisions of Pub. Sts., c. 115. It further states that the purpose of the corporation is "to promote benevolence and charity, advance morality and social intercourse among its members, provide means for entertainment and instruction for its members, assist the sick and indigent, provide for the burial of the dead and the support of their families." Its by-laws provide certain qualifications for member-

ship which are not important to the discussion of the question submitted. Section 4 of Article 11 further provides that no person shall be admitted "who shall be engaged in any of the professions," or "who shall be engaged in commercial business on his own account: *provided, however*, that this article shall not apply to the corporation physician, or to persons engaged in industrial pursuits or labor." Although one of the purposes of the organization is to aid its sick and the families of its deceased members, yet under the provisions of its by-laws a member obtains no contract rights against the corporation for those purposes, but relies solely upon a vote of the directors authorizing such payments.

The articles of association of this corporation, as well as its by-laws, brings it clearly within the provisions of Pub. Sts., c. 115, relating to associations for charitable, educational and other purposes. The question submitted is whether it is also subject to the provisions of St. 1888, c. 134, authorizing the incorporation of labor or trade organizations; and especially to section 4 of said chapter, which provides that no member of a corporation organized under that statute shall be expelled by a vote of less than a majority of all the members thereof.

I am of opinion that the corporation in question is not subject to the provisions of the statute of 1888. There is much similarity between the two classes of corporations. Both look to the promotion of the welfare of their members and are charitable in their nature. But the statute of 1888 is specific, and relates to a particular class of charitable associations, to wit, labor organizations. The purpose of corporations formed under this chapter is stated in section 1 to be that of "improving in any lawful manner the condition of any of the employees in any one or more lawful trades or occupations."

This cannot be said to be the specific purpose of the corporation in question. It is true that under its by-laws no person engaged in any one of the learned professions, or in commercial business on his own account, can be admitted as a member. This rule of exclusion, however, by no means limits membership to employees or persons engaged in manual labor. Persons engaged in any business or occupation are eligible to membership, as are common laborers who have learned no special trade. The organization of the corporation is broad enough to authorize the admission to its membership of any person, regardless of his business or occupation, excepting only professional men and merchants; and the purposes of its incorporation have no specific reference to "the improvement of the condition of employees in any one or more lawful trades or occupations."

I am of opinion, therefore, that the corporation is not subject to the provisions of St. 1888, c. 134, § 4, requiring a vote of a majority of all the members for the expulsion of a member.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Gas manufactured by municipal corporations. — Inspection. — Penalty. — Gas Commissioners.

St. 1891, c. 370, § 17, imposes the same duty upon the gas inspector to inspect the gas manufactured and supplied by municipal corporations as Pub. Sts., c. 61, § 14, as amended by St. 1892, c. 67, imposes upon him to inspect the gas of other corporations.

Although the penalty for supplying inferior gas is nugatory so far as municipal corporations are concerned, yet it is important that gas supplied by them should be inspected, so that the Gas Commissioners may be informed as to how far they comply with the law.

MAY 26, 1898.

CHARLES D. JENKINS, *Esq., Gas Inspector.*

DEAR SIR:— Your letter of the 12th inst. requires my opinion upon the question whether it is your duty to inspect gas supplied by municipal corporations.

St. 1891, c. 370, enables cities and towns to manufacture and distribute gas and electricity, and provides in section 17 as follows: "All general laws of the Commonwealth, and all ordinances and by-laws of any city or town availing itself of the provisions of this act, relative to the manufacture, use, generation or distribution of gas or electricity, or the quality thereof, or plant or the appliances therefor, shall apply to such city or town, so far as the same may be applicable and not inconsistent with this act, in the same manner as the same apply to persons and corporations engaged in making, generating or distributing gas or electricity therein."

I am of opinion that this section imposes upon you the same duty of inspection of gas manufactured by municipalities as is imposed upon you by existing laws relative to gas manufactured by other corporations. The inspection required of you by Pub. Sts., c. 61, § 14, as amended by St. 1892, c. 67, is for the purpose of testing the quality of the gas manufactured; and the section quoted provides specifically that the general laws relating to the quality of gas apply to gas manufactured by municipalities.

It is true that under section 14, providing for inspection by your office, the only penalty for producing gas below the standard fixed thereby is a fine of one hundred dollars, to be paid by the company to the city or town supplied by it. This penalty is nugatory so

far as municipalities are concerned, for the town receiving the fine is also the town upon which the fine is imposed. But, although there is no effective penalty for producing gas of inferior quality which can be enforced against cities and towns, it does not follow that it is not your duty to make the inspection. The collection of the fine is not the only purpose of the inspection. It being your duty to report to the Gas Commissioners (St. 1885, c. 314, § 15), it is important that gas supplied by municipalities should be inspected, to the end that the Board having general jurisdiction of the whole subject shall be fully informed as to how far the provisions of law relating thereto are complied with by cities and towns.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Constitutional law. — Authority of General Court to enact legislation allowing soldiers to vote without the city, town or district in which they are entitled to vote under existing law or without the Commonwealth.

JUNE 3, 1898.

His Excellency ROGER WOLCOTT, *Governor.*

DEAR SIR:— Replying to your letter of inquiry of June 2, I am of opinion that the General Court is authorized to enact by legislation that inhabitants of this Commonwealth engaged in the military service of the United States, being otherwise qualified, may cast their votes without the limits of this Commonwealth, or in any town or district within this Commonwealth, for electors for president and vice-president of the United States, and for representatives to congress; also for sheriffs, registers of probate, clerks of courts, district attorneys and all civil officers whose election is not otherwise provided for by the constitution of the Commonwealth; also for municipal officers.

I am further of opinion that the General Court is not authorized, under the constitution, to enact by legislation that inhabitants of this Commonwealth may cast their votes for governor, lieutenant-governor, councillor, senator, representative, treasurer and receiver-general, secretary, auditor or attorney-general in any other place, whether within or without this Commonwealth, than in the town, city or district in which under the provisions of the constitution of the Commonwealth they are entitled to vote.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Highland Cadets of Montreal. — Military organization. — Parade with firearms. — Authority of United States. — Governor. — Constitutional Law.

The Highland Cadets of Montreal, Canada, a military organization, are prohibited from parading with firearms in this Commonwealth by St. 1895, c. 465, § 6.

The governor has no authority to waive the provisions of that statute.

It is a matter of domestic regulation, and not within the jurisdiction of the United States or its authorities.

The statute is constitutional.

JUNE 4, 1898.

Maj.-Gen. SAMUEL DALTON, *Adjutant-General.*

DEAR SIR:— Your letter of June 2 requires my opinion upon the question whether the Highland Cadets of Montreal, Canada, a military organization, may be authorized, either by the authorities of the United States or by the governor of this Commonwealth, to parade with firearms in Massachusetts.

St. 1895, c. 465, § 6, provides that “No body of men whatsoever, other than the regularly organized corps of the militia, the troops of the United States and the Ancient and Honorable Artillery Company of Boston, shall maintain an armory or associate themselves together at any time as a company or organization, for drill or parade with firearms.” Section 7 of the same chapter provides a penalty for violation of the provisions of the section quoted. There can be no question that the provisions of this statute extend to the case in question. It is not limited in its terms to citizens of the Commonwealth; and the purposes of its enactment apply as well to companies from foreign countries as to domestic organizations. The Legislature undoubtedly considered that it would not be conducive to the general welfare to permit armed bodies of men to assemble together or to parade through the public streets. Such a law is clearly within the so-called police power conferred upon the Legislature by the constitution. It is moreover in conformity to the spirit of article 17 of the declaration of rights, which declares that “The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature, and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.”

In *Presser v. Illinois*, 116 U. S. 252, 267, a case in which a similar statute in Illinois was upheld as being constitutional, Mr. Justice Woods, in delivering the opinion of the court, said: “It cannot be successfully questioned that the State governments, unless restrained by their own constitutions, have the power to reg-

ulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform the duties and exercise the privileges of citizens of the United States; and have also the power to control and regulate the organization, drilling and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power by the States is necessary to the public peace, safety and good order. To deny the power would be to deny the right of the State to disperse assemblages organized for sedition and treason, and the right to suppress armed mobs bent on riot and rapine."

Military associations, whether foreign or domestic, being expressly prohibited by statute from parading with firearms, it is scarcely necessary to state that the Governor has no authority to waive its provisions.

Nor can authority be given by federal officers or under federal laws. It is a matter of domestic regulation, and not within the jurisdiction of the United States or its authorities.

Yours truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Deputy city auditor of Boston.—Civil service.

The duties of the deputy city auditor of Boston, as defined by the auditor, involve the exercise of judgment, discretion, authority and responsibility, and his position does not come within the classification of civil service rule VI., schedule A.

JUNE 30, 1898.

CHARLES THEODORE RUSSELL, Esq., *Chairman, Civil Service Commission.*

DEAR SIR:—Your letter of June 7 requires my opinion upon the question whether the deputy city auditor of Boston comes within the classification provided by schedule A in civil service rule VI. of the rules of the Civil Service Commissioners.

The duties of the office are defined in a letter from the city auditor, dated May 9, 1898, from which I quote the following:—

All requisitions upon the Civil Service Commission for the certification of names and all communications from heads of departments and divisions to the civil service commissions will hereafter pass through your office and be made a matter of record there; and it is also desired, if such an arrangement can be made with the Civil Service Commission, that all certifications of names and other communications from the Civil Service Commission to heads of departments shall equally pass through your hands.

Your office is also to serve as a bureau of information, both for the

departments and for the public, as to all matters pertaining to the civil service laws and rules and the application thereof; you will be expected to be thoroughly familiar with the laws and rules, with any decisions or opinions of the Attorney-General relative to the construction of the same, and with the practice and rulings of the Civil Service Commissioners. You will be expected to know just what positions are specifically classified, and to have such general knowledge as can be obtained at the office of the Civil Service Commission as to the condition of the eligible lists.

If, in the performance of these duties, it becomes necessary or desirable for you to consult with the law department, you can hold such consultation at any time informally, or request a formal opinion upon any point through me.

You will be expected to inspect, so far as possible, all the pay rolls of the city, and satisfy yourself that all persons now upon such pay rolls are legally employed, and to see that any new names appearing upon the pay rolls are properly there, either through comparison with the certifications of the Civil Service Commission or through satisfying yourself that the positions filled do not come under the civil service law or rules.

You will be expected to prepare periodically such statistical information as to numbers of men employed in different capacities, discharges, new appointments, etc., as may be desired by the board of statistics. While your duties come in a general way under the auditing department, the work specially assigned to you is in large part work which this department has not heretofore undertaken to perform, and you will be given an office distinct from the regular office of this department.

Schedule A under civil service rule VI. includes the following positions, to wit: "Clerks, and other persons, under whatever designation, rendering services as copyists, recorders, book-keepers, agents, or any clerical, recording or similar service;" also "inspectors, agents, almoners, and all persons, under whatever designation, whose duties may be in part clerical." In previous opinions given to your Board by this office I have stated that in my judgment the civil service act and the rules established thereunder should in general be so construed as to distinguish between positions of mere routine, which ordinarily do not involve administrative or discretionary powers, on the one hand, and those, on the other hand, which involve the exercise of judgment, discretion, authority and responsibility; and that the general scheme of the act includes the former and does not include the latter class. Attorney-General's Opinions, Oct. 12, 1892, and July 17, 1896.

This definition seems to me to be conclusive of the present case. Assuming that the letter of instructions above quoted correctly defines the duties of the deputy city auditor, it is plain that the duties of his office, involving as they do the exercise of judgment, discretion, authority and responsibility, come within the latter

class, and are not within the fair scope of the classification in the schedule referred to.

I am of opinion, therefore, that the duties of the deputy city auditor, as above stated, are not such as to bring the office within the classification established by your rules.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Cattle Commissioners.—Appropriation.—Expenses.—Salaries.

The Legislature did not appropriate any money for the expenses of the Cattle Commissioners for 1898, but the law establishing the Board and fixing the compensation of its members is not repealed thereby. They are still the sworn officers of the Commonwealth, and are required to perform the duties prescribed for them by the statutes, except so far as those duties involve the expenditure of money.

They cannot receive their salaries now, but their claims therefor are just, and, like all other claims against the Commonwealth, depend for their payment upon the sense of justice of the Legislature.

JULY 2, 1898.

AUSTIN PETERS, *Chairman, Board of Cattle Commissioners.*

DEAR SIR:—Your letter of the 25th ult. calls attention to the fact that no appropriation for the expenses of your commission has been made by the present Legislature, and requires the opinion of the Attorney-General upon the question “whether, in view of that fact, the commission should cease to perform its duties and lock up its office altogether; or whether it should remain organized, keep its office open and do what it can.”

With one or two exceptions, not necessary now to consider, no money can be paid from the treasury of the Commonwealth to any person whatsoever without a specific appropriation therefor by the Legislature. The officers of government hold their positions in view of the general statutes relating thereto, which fix their duties and establish their salaries. Such general laws, however, do not of themselves authorize the payment of the salaries so established, or of the incidental and necessary expenses incurred in the discharge of the duties of such officers. For these an appropriation must annually be made by the Legislature. This principle extends throughout every department of State government. It is in recognition of the fundamental principle that the amount of expenditure for governmental purposes, and the consequent tax levy therefor, is, and in a republican form of government necessarily must be, within the immediate and direct control of the representatives of the people. Even judgments of the courts in civil pro-

ceedings against the Commonwealth cannot be paid without a special appropriation therefor. Pub. Sts., c. 195, § 4.

It is, moreover, expressly provided by Pub. Sts., c. 16, § 37, that "No public officer shall make purchases or incur liabilities in the name of the Commonwealth for a larger amount than that which has been appropriated by law for the service or object for which such purchases have been made or liabilities incurred; and the Commonwealth shall be subject to no responsibility for the acts of its servants and officers beyond the several amounts duly appropriated by law."

The Legislature having deliberately and repeatedly refused to make further appropriation for the conduct of the business of your commission, you are thereby relieved from the performance of such of the statutory duties devolved upon you which involve the incurring of liability to be paid by the Commonwealth. By the positive provisions of the statute above quoted, you have no right to do any acts whatsoever which call for the expenditure of the money of the Commonwealth. The general statutes applicable to your commission imposing duties upon your Board are to be construed in connection with and are limited by the statute I have quoted. For example, it is made your duty to cause horses afflicted with glanders to be killed. In so far as this duty may require the expenditure of money, you have no right, in view of the action of the Legislature, to perform it; and the failure of the Legislature to furnish money for the purpose is to be regarded by you as abrogating any duty imposed upon you in that respect. Although by general laws you have been made the agents of the Commonwealth to do certain acts, your agency has been by implication revoked by the failure of the Legislature to furnish you with money for that purpose.

The foregoing considerations apply to such portion of your duties as involve the expenditure of money. The failure, however, to make an appropriation does not repeal the law establishing your Board and its duties, except as hereinbefore stated, nor that which fixes your compensation. You are still sworn officers of the Commonwealth, duly constituted, charged with the performance of the duties thereof, so far as the same can be performed without the expenditure of money or the incurring of liability on behalf of the Commonwealth, and entitled to the compensation fixed by law for your services. No appropriation having been made, you cannot at present receive your salary. Your claim, like all other claims against the Commonwealth, depends for its payment upon legislative appropriation, and you have no other security that it will be paid than your reliance upon the sense of

justice of the General Court. As I have already intimated, no officer and no creditor of the Commonwealth stands upon a better title. With the exception of the governor and the justices of the supreme judicial court, no officer of the Commonwealth, however elected or appointed, can receive the compensation fixed by law for his office until the amount has been appropriated by the Legislature. Nor can any person having a claim against the Commonwealth, however just, enforce its payment otherwise than by the grace of the General Court.

The failure of the Legislature to make appropriation for your work does not require you to abdicate your offices, nor to give up the performance of your duties, excepting in the cases where liability in behalf of the Commonwealth may be incurred. On the contrary, it is the duty of your commission to continue to hold their offices, and to perform the duties thereof, so far as may be, with the expectation that at some future time the Legislature will authorize payment therefor. If you are not willing to continue in office under these conditions, it is your duty to resign.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Ballot Law Commission.—Appointment.—Democratic National party. The governor is not authorized to appoint a member of the Democratic National party upon the Ballot Law Commission in 1898.

JULY 18, 1898.

His Excellency ROGER WOLCOTT, *Governor.*

DEAR SIR:—St. 1896, c. 383, prescribes the qualifications of the members of the Ballot Law Commission. It provides in section 1 that the commission shall be so selected that at least one of its members "shall be of the political party which at the annual State election next preceding their appointment, cast the largest vote for governor, and at least one of said members shall be of the political party which cast the next largest vote for governor." At the last State election, held in November, 1897, the largest number of votes was cast for the candidate of the Republican party; the next largest vote for governor was cast for George Fred Williams, nominated as a candidate by the Democratic party, at a convention duly called and held. The latter received 79,552 votes. William Everett, regularly nominated at a convention of the party called the "Democratic National" party, received 13,879 votes. Both the Democratic and the Democratic National party appear to have maintained regular and complete party organizations, and to have been entirely distinct and independent each from the other.

The political complexion of the Ballot Commission, so far as concerns the duty of the executive in making appointments thereto, is determined by the annual State election next preceding the appointment. Your letter directs me to assume, for the purpose of the inquiry submitted, that no member of the Ballot Commission, as at present constituted, is a member of or affiliates with the party organization which nominated Mr. Williams for governor. Until there was occasion to make a new appointment to the commission, this fact was, under the statute, of no consequence; but now that an appointment is to be made, I am clearly of the opinion that it is the duty of the Governor to select a member of that organization, and that it would not be a compliance with the law to appoint a member of the Democratic National party.

I am aware that in the case of *Jaquith v. Wellesley*, 171 Mass., decided May 19, some of the language used by Mr. Justice Barker in delivering the opinion of the court may seem to be inconsistent with the views above stated. It is to be borne in mind, however, that the eligibility of the person in question in that case, which arose in the summer of 1897, was governed by his party affiliations in the State election of 1896. During that election, as Your Excellency will remember, the Democratic party was divided into two factions, each claiming to be regular, and disputing with the other the right to represent the Democratic party. Both factions held State conventions and nominated their candidates as Democrats. Until the election of November, 1896, was held it could not be determined with certainty which faction more truly represented the majority of the voters of the party; nor could it be said that one who affiliated with either of the factions contending in that election had thereby lost his right to membership in the party. The decision of the court determined nothing more than that the Democratic party, although divided into factions during the campaign and in the election of 1896, was, notwithstanding, one of the leading political parties of the nation, membership in which would not be lost in consequence of affiliation with either faction during that campaign and election.

The question which now arises, however, is to be determined with reference to the election of 1897, when a different condition of things prevailed. Both factions had perfected their party organization and machinery. The majority body retained the word "Democratic," and had become without doubt the representative in this Commonwealth of the regular national organization. The minority faction no longer claimed to be a part of the National Democratic party, as it then existed. The two organizations ceased to be factions of one party and became separate and dis-

tinct parties, differently denominated, each holding its own convention, adopting its own platform and nominating its own candidates. The difference between them was even more radical than that between them and the Republican party, and was scarcely less marked than that between the Republican party and the Prohibition party.

For these reasons the principles enunciated in *Jaquith v. Wellesley* are not in my opinion applicable to the situation as it exists to-day, and would not be so held by the court.

In that case, the incumbent had been regularly and lawfully appointed, and his removal was sought because of his alleged change of political faith. This issue was heard before the selectmen and decided in favor of the incumbent; and the court refused to issue a mandamus reversing the action of the selectmen in the matter, or compelling them to act otherwise. A very different question was presented from that which now confronts Your Excellency. A new appointment is to be made; and in making that appointment it is, in my opinion, the plain duty of the executive, in view of the political situation as it existed in the election of 1897, to recognize the organization which cast the next to the largest number of votes at that election as entitled to representation upon the Ballot Law Commission.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Land registration act. — Appointees.

The land registration act does not take effect in any respect till Oct. 1, 1898, and no appointments can be made thereunder till then.

JULY 21, 1898.

His Excellency ROGER WOLCOTT, *Governor.*

DEAR SIR: — The question submitted, whether appointees under the land registration act (St. 1898, c. 562) draw salary from the time of their appointment, or whether such salary does not begin until October 1, is apparently based on a misconstruction of the statute. The last section of the act provides that it "shall take effect upon the first day of October in the year 1898." So far as I have been able to discover, there is no provision, such as is often made in similar statutes, for having that portion of the act providing for appointments take effect at an earlier day than the date fixed for the full effect of the whole statute.

For example, St. 1897, c. 508, enacted that the term of office

of the bar examiners provided for by that act should commence on the first day of October, and that the act should take effect on the first day of January following. So, in the act establishing the superior court (St. 1859, c. 196), it was provided in the last section that the act should take effect, so far as the appointing, commissioning and qualifying the justices were concerned, on the tenth day of May, and that the act should take full effect on the first day of July following.

There are many reasons why the officers of the court should be appointed, the court established and the manner of procedure promulgated, so that its business could begin October 1, when the act takes effect. There is, however, no such provision in the act. It appears to be an oversight. In the absence of any such provision, I can find no authority authorizing the executive to make appointments before the first day of October. Section 4, providing for the appointment of judges and a recorder, is not yet law, and will not be law until the first day of October, and an appointment made now or at any time before that date would be without authority of law.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Attorney-General. — Certificates. — Internal revenue law.

State officers have no right to the opinion of the Attorney-General upon questions which do not concern them in the performance of their official duties.

Persons other than state officers are not entitled to the opinion of the Attorney-General, and would not be bound by it if they had it.

If statutes of Massachusetts make it the duty of the Secretary of State to file or record any instrument, he should do so regardless of whether proper revenue stamps have been affixed to it or not.

A certificate is a statement written and signed (usually by some public officer), but not necessarily or usually sworn to, which is by law made evidence of the truth of the facts stated, for all or for certain purposes.

A certificate of nomination is a certificate within the meaning of the internal revenue law and requires a stamp to be affixed thereto.

A nomination paper is not a certificate.

JULY 27, 1898.

Hon. WM. M. OLIN, *Secretary of State.*

SIR: — Your letter of July 20 requests the opinion of the Attorney-General upon the question whether the following forms of certificates required by law to be filed in your office are subject to the

provisions of the United States revenue law requiring internal revenue stamps to be affixed thereto; to wit:—

- (1) Statement of receipts and expenditures, under the corrupt practices act, so called.
- (2) Statement of expenses, under the lobby act, so called.
- (3) Certificate of condition of corporation, under Pub. Sts., c. 106.
- (4) Certificate to accompany labels, etc., under the trade-mark act
- (5) Convention certificate of nomination.
- (6) Nomination paper.

You have no occasion to seek the opinion of the Attorney-General upon the first four of the forms of certificates enumerated in your letter. If they are subject to the provisions of the federal law, the stamps required are to be affixed not by you, but by the persons filing the same. Whether they should affix stamps or not, is for them to determine. They are not entitled to the opinion of the Attorney-General upon the question, and would not be bound thereby.

The internal revenue law, it is true, provides in section 15, that it shall not be lawful to record or register any instrument required to be stamped unless a stamp of the proper amount has been affixed thereto; but a similar provision of the internal revenue law of 1866, (U. S. Sts., 1866, c. 184, § 9) was held by the supreme judicial court of Massachusetts not to prohibit the performance by the officers of the Commonwealth of the duties imposed upon them by its statutes, but that it was limited in interpretation and effect to records required or authorized by acts of Congress. *Moore v. Quirk*, 105 Mass. 49.

It being made your duty by the statutes of Massachusetts to file or to record the instruments in question, you should do so, regardless of the question whether proper revenue stamps have been affixed or not.

The same may be said of certificates of convention and nomination papers. In view, however, of the importance of uniformity in proceedings under the election laws of the Commonwealth, it has been the custom of this office to advise you upon questions relating to such matters, even though they may not strictly concern the performance of your official duties. The questions now stated appear to be of that class.

Schedule A of the internal revenue law, enumerating instruments which must be stamped, provides as follows: "Certificate of any description required by law not otherwise specified in this act, ten cents."

The word "certificate" may be defined as a statement, written

and signed (usually by some public officer), but not necessarily or usually sworn to, which is by law made evidence of the truth of the facts stated, for all or for certain purposes. Such are, for example, a certificate of discharge, issued by a bankruptcy court to show that a bankrupt has been duly released from his debts; a certificate of naturalization, issued by the proper court to show that the holder has been duly made a citizen; a certificate of registry, issued by a custom house collector to show that a vessel has complied with the navigation laws. Century Dictionary, title *Certificate*.

In Bouvier's Law Dictionary, under the title *Certificates*, it is stated that "certificates are either *required by law*, as an insolvent's certificate of discharge, an alien's certificate of naturalization, which are evidence of the facts therein mentioned; or *voluntary*, which are given of the mere motion of the party giving them and are in no case evidence."

These definitions, though not wholly consistent, appear to be sufficient to indicate the meaning of the words "certificate of any description required by law," as used in the act of Congress. They are not limited, in my judgment, to statements which may by statute provision be received as evidence in judicial proceedings, but include all statements required by statute to be made as evidence for the use of any officer of the Commonwealth in the performance of his duty.

Applying these principles, it is not difficult to reach the conclusion that certificates of nomination are "certificates required by law," within the meaning of the internal revenue statute. A certificate of nomination is a certification by the presiding officers of a political convention of the candidates nominated at such convention to be voted for at the next annual election. It is required to be signed and sworn to. The Secretary of State receives it as evidence of the proceedings of the convention, and it is his duty, if the certificate is in due form, to enter the names of the candidates so nominated upon the official ballot. Every requirement of a certificate, as that word is used in legal proceedings, is fulfilled in such a paper. I am of opinion that it is within the provisions of the internal revenue statute, and must be stamped.

It is otherwise with a nomination paper. This is merely a statement by certain voters that they desire to nominate a person as a candidate for office. It must be sworn to, but an affidavit is not a certificate. There must be affixed to the nomination paper the certificate of the registrars of voters of the town or district within which the nomination is made, that the names signed to the nomination paper are those of qualified voters. This is undoubtedly a

certificate within the meaning of the law, but, being given in the performance of official duty, is within the proviso of section 17 of the internal revenue statute, which exempts from the stamp taxes imposed by the act State, county, town or other municipal corporations in the exercise of functions strictly belonging to them in their ordinary governmental, taxing or municipal capacity. Although this proviso is inserted in a section relating to other forms of instruments, I am of opinion that it was intended by Congress to be general in its applications, and to exempt all papers required of State or municipal officers by the provisions of our statutes.

I am of opinion, therefore, that nomination papers do not require to be stamped under the provisions of the United States revenue statute.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Gas Commissioners.—Internal revenue law.

The Gas Commissioners are not required to affix internal revenue stamps upon returns required by law to be made to them, and it is immaterial to them whether such returns are stamped or not.

JULY 28, 1898.

FORREST E. BARKER, Esq., *Chairman, Gas Commissioners.*

DEAR SIR:—I have your letter of July 25, inquiring whether the provisions of the internal revenue statute, recently enacted, apply to the returns required by law to be made to your Board by the several gas and electric lighting companies in the Commonwealth.

You have no occasion to seek the opinion of the Attorney-General upon this question. If such returns are subject to the provisions of the federal law, the stamps required are not to be affixed by your Board, but by the persons or corporations filing the same. Whether they should affix stamps or not is for them to determine. They are not entitled to the opinion of the Attorney-General upon the question, and would not be bound thereby.

The internal revenue law, it is true, provides, in section 15, that it shall not be lawful to record or register any instrument required to be stamped, unless a stamp of the proper amount has been affixed thereto; but a similar provision in the internal revenue law of 1866 (U. S. Sts., 1866, c. 184, § 9) was held by the supreme judicial court of Massachusetts not to prohibit the performance by the officers of the Commonwealth of the duties imposed upon them by its statutes, but that it was limited in interpretation and effect

to records required or authorized by acts of Congress. *Moore v. Quirk*, 105 Mass. 49. This relieves your Board from any responsibility in the matter.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Certificates.—Internal revenue law.—Clerks of courts,—Congress.

Certificates issued by clerks of courts, except when issued for the benefit of the Commonwealth, should be stamped, and the stamps should be paid for by the persons for whose benefit they are issued.

Congress has no power to impose a tax in any form upon the States as sovereign bodies.

JULY 28, 1898.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts.*

DEAR SIR:—There is little doubt that certificates issued by clerks of courts should be stamped, in accordance with the provisions of the war revenue law of 1898.

Your letter of July 21, assuming that stamps must so be affixed, inquires whether the person to whom the paper issues should be charged for the stamp in addition to the prescribed fee, or for the stamp alone, where no fee for the instrument is provided by law.

Section 6 of the internal revenue statute provides: “That on and after the first day of July, eighteen hundred and ninety eight, there shall be levied, collected and paid, for and in respect of the several bonds, debentures or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in schedule A of this Act, or for or in respect of the vellum, parchment, or paper, upon which such instruments, matters, or things, or any of them shall be written or printed by any person or persons, or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.”

It thus appears that the stamp is to be paid for either by the person who issues the instrument, or by the person for whose benefit the same shall be issued.

It is obvious, not only from this but also from other sections of the revenue act, that, with certain exceptions, not necessary now to consider, Congress is indifferent as to who shall pay the tax. It is not a tax upon any class of individuals, but upon transactions. Congress has selected the transactions of frequent occurrence, and has imposed a stamp tax upon documents which are a part of such

transactions. The essential requirement is that the stamp shall be affixed; and the person issuing the document is held to see to it that the stamp required by law is so affixed and duly cancelled.

It is well settled, however, that in the case of certificates issued by any officer of the Commonwealth, for the benefit or use of any person or corporation excepting the Commonwealth, only the person or corporation for whose use or benefit the certificate is issued can be compelled to pay the tax chargeable by law. Congress has no power to impose a tax in any form upon the States as sovereign bodies. *Collector v. Day*, 11 Wall. 113; *Cooley's Constitutional Limitations*, 6th ed., p. 592, and cases cited. The same is true as to municipal corporations. *United States v. Railroad Company*, 17 Wall. 322, 329.

This being so, it follows that the stamps required by the revenue act are to be paid for by the persons for whose use or benefit the paper is issued. It being also the duty of the officer issuing the same to see to it that the document is duly stamped, he may lawfully require the person for whose benefit it is issued to pay for the necessary stamps to be affixed thereto.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Civil Service.—Temporary vacancies.

St. 1898, c. 447, does not authorize appointing officers to fill vacancies in their departments, caused by the enlistment of employees who hold positions classified under the Civil Service Rules into the volunteer service of the United States, without making requisition upon the Civil Service Commissioners.

JULY 28, 1898.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR:—Your letter of June 24 requests the opinion of the Attorney-General upon the question whether, under St. 1898, c. 447, appointing officers have the right to fill, temporarily, vacancies in their departments in cases where the positions are classified under the civil service rules, without making a requisition upon the Civil Service Commissioners.

The statute in question is as follows: "Heads of departments, boards, commissions and superintendents of State institutions having in their employ men who desire to enlist under the call of the President of the United States for service in the war now existing between the United States and Spain are hereby authorized to grant leave of absence, without pay, to men mustered into the volunteer service of the United States, until they are honorably

discharged therefrom; and said officials are hereby authorized to fill temporarily any vacancies occurring by reason of such mustering into the United States service."

The purpose of this statute is not to suspend or repeal the civil service laws and rules. It was to enable men holding positions in the civil service to enlist in the service of the United States without losing their positions. Men who muster into the volunteer service of the United States are, under the provisions of this statute, to be granted leave of absence without pay, and the appointments to the vacancies thus created are not permanent, but temporary.

The only authority for temporary appointments without requisition upon the Civil Service Commission is section 1 of rule XLI., which provides as follows: "Appointments . . . for temporary service shall be made in accordance with the civil service rules except in case of emergency, where the public business would suffer from delay in filling the position as herein provided. In no case shall such appointment or employment for an emergency continue for more than ten days, and no reappointment or employment of the same person, or of another to the same position at the end of such period, shall be allowed."

It is obvious that this rule would not authorize temporary appointments under the statute above quoted, without making requisition upon the Civil Service Commissioners. The appointment, though temporary, must be made under civil service rule XXVI., which provides that "Whenever there is a vacancy to be filled in the classified service, the appointing officer or power shall make requisition upon the commissioners for the names of eligible persons."

The statute does not repeal this rule.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Savings bank. — National bank. — Vault.

St. 1898, c. 567, § 3, is nugatory in so far as it attempts to put the securities of a savings bank beyond the reach of the officers of a national bank when the treasurer of the savings bank is also cashier of the national bank.

JULY 28, 1898.

STARKEY WHITON, Esq., *Chairman, Savings Bank Commissioners.*

DEAR SIR:— Your letter of July 13 requests the opinion of the Attorney-General as to the proper construction to be given to Sts. 1898, c. 567, § 3.

The section, so far as material to the question raised, is as follows: "No savings bank or institution for savings shall . . . occupy in common the same safes or vaults with any bank, national banking association or trust company: *provided, however,* that nothing herein contained shall be construed to prohibit a savings bank or institution for savings from occupying within such vault a safe or compartment over which it has exclusive control."

The principal question stated in your letter refers to the construction to be given to the section quoted when the same person holds the office of treasurer of a savings bank and cashier of a national bank, both using the same vault.

I am told that the section under consideration was submitted to your Board as the second section of a proposed bill, the first section of which provided that the offices in question should not be held by the same person. Taken in connection with that section, it would be effective, but in consequence of the refusal of the Legislature to enact the first section or to prohibit the holding of those offices by one person, the purpose of the second section (the one now under consideration) was for the most part frustrated.

As it stands, the only effect of the section in question is to require that when a vault of a national bank is used by a savings bank, a separate compartment be set apart for the use of the savings bank and for its exclusive occupation. In view of the fact that the holder of the two offices necessarily has access to the compartment set apart for the use of the savings bank, the section, in so far as it attempts to put the securities of the savings bank beyond the reach of officers of the national bank, is nugatory.

The section cannot, in my opinion, be construed as you suggest, to authorize your Board to direct that any other officer of the savings bank than the treasurer shall have exclusive control of or access to the portion of the vault set apart for the use of the savings bank. By the very nature of his office, no one but the treasurer has the right to the custody of the securities of the savings bank; much less would it be proper for such custody to be taken from him and given to another officer.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Street railway companies. — Franchise taxes. — Apportionment. — Special legislation.

The Tax Commissioner cannot apportion the franchise tax assessed upon street railway companies for 1898 among cities and towns, since St. 1898, c. 578, provides that apportionment shall be made to them in proportion to the length of track operated by street railway companies, in them, but does not provide that the companies shall return to the Tax Commissioner the length of track operated by them in cities and towns till May, 1899.

The tax for the current year cannot be distributed until the Legislature makes provision therefor.

AUG. 4, 1898.

Hon. CHARLES ENDICOTT, *Tax Commissioner*

DEAR SIR:— Your letter of July 28 discloses an omission in St. 1898, c. 578, which can only be supplied by legislation.

Pub. Sts., c. 13, §§ 38 and 40, provide for a franchise tax upon the shares of certain Massachusetts corporations, including street railway companies, to be assessed by the tax commissioner, payable not earlier than the first day of November (section 53). These provisions have not been repealed by St. 1898, c. 578, relating to street railways.

Under the provisions of Pub. Sts. (sections 57 and 58), this tax was apportioned by the Tax Commissioner to the cities and towns substantially upon the basis of the number of shares of said corporations owned by residents of such cities and towns, respectively.

These sections have been expressly repealed by St. 1898, c. 578, § 26. The statute takes effect October 1 (section 28). It follows that the tax for the current year cannot be distributed under the provisions of the Public Statutes.

St. 1898, c. 578, provides, in section 4, that "Prior to the first day of November in each year the Tax Commissioner shall apportion the amount of the tax for which each street railway company is liable under the provisions of chapter thirteen of the Public Statutes, and under the provisions of section three of this act, among the cities and towns in proportion to the length of tracks operated by said companies in said cities and towns, respectively."

The Tax Commissioner can only ascertain the length of tracks operated by street railway companies in the several cities and towns of this Commonwealth from the returns required to be made by such companies in May of each year. Pub. Sts., c. 13, § 38. Under that section the returns so required did not show the length of tracks operated by street railway companies in the several cities and towns in the Commonwealth. But by St. 1898, c. 578, § 2, that section is amended, so that hereafter the returns

made by street railway companies must show the length of tracks operated in each city and town.

The first return, however, under the amended law will not be made until May, 1899. It follows that the Tax Commissioner has no data upon which he can apportion the tax assessed and collected for the current year. No distribution, therefore, can be made of the tax for the current year until provision therefor is made by the Legislature.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Internal revenue law.—Certificates.

Certificates given by the Civil Service Commission in the performance of their official duties do not require an internal revenue stamp, for the reason that the Commonwealth would have to pay for the stamp, and Congress has no power to tax the Commonwealth.

AUG. 11, 1898.

CHARLES THEODORE RUSSELL, Esq., *Chairman, Civil Service Commission.*

DEAR SIR:—For reasons which are fully stated in an opinion submitted to the Secretary of the Commonwealth, dated July 27, 1898, I am of opinion that the internal revenue law of 1898 does not require stamps to be affixed to certificates, forms of which are submitted with your letter of August 2.

Briefly reviewing the reasons considered at length in the communication referred to, the certificates in question are given in the exercise of governmental functions. To compel either the Civil Service Commission, or the Board or officer that receives it, to pay a stamp tax upon it, would be to impose a tax either upon the State itself, or upon some municipal corporation within the State. Under a similar provision in the revenue statutes during the civil war, it was held that Congress has no power to tax either the States or any municipal corporation therein. *United States v. Railroad Co.*, 17 Wall. 329; *Collector v. Day*, 11 Wall. 113.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Marine insurance.—Capital and surplus.

The words "Capital and surplus, wherever they may be," in St. 1898, c. 537, § 3, include the property and assets of a foreign marine insurance company both in the United States and in foreign countries.

AUG. 12, 1898.

FRANK H. HARDISON, Esq., *Deputy Insurance Commissioner.*

DEAR SIR:—The Massachusetts insurance act of 1894, c. 522, provides in section 20 that: "No fire insurance company shall

insure in a single hazard a larger sum than one-tenth of its net assets." The word "fire" was inserted inadvertently, as plainly appears by the context, and was stricken out by St. 1895, c. 59. This prohibition, together with the restrictions upon reinsurance enacted in the same statute, have proved burdensome, and have made it difficult readily to place large risks.

St. 1898, c. 537, was enacted upon the petition of numerous merchants and importers, who were affected by the stringency of these restrictive provisions. By the first section of this act reinsurance is permitted in companies not authorized to do business in this State, when evidence is furnished to the Insurance Commissioner that such insurance cannot be obtained in authorized companies; and in such cases the restrictive provisions of section 20, above quoted, as to the amount which may be insured in a single hazard, do not apply. Section 3 of the statute of 1898 repeals section 20, as to marine insurance companies, by providing that "Any insurance company authorized to do marine business in this Commonwealth may take any risk provided it reinsures the same, if necessary, so that it does not retain for itself of the risk an amount exceeding ten per cent. of its capital and surplus, wherever they may be."

Your letter of July 27 requests the opinion of the Attorney-General as to the construction of the words "ten per cent. of its capital and surplus, wherever they may be." You suggest in your letter "that there is an ambiguity, or seeming ambiguity, arising from the fact that the words 'capital and surplus' have a general significance from common use, but a special one under the Massachusetts statutes when applied to insurance companies of a foreign country." St. 1894, c. 522, § 79, after requiring a deposit either with the Treasurer of the Commonwealth or with the financial officer of some other State, provides that "such deposit shall be deemed for all purposes of the insurance laws the capital of the company making it." Section 81 of the same statute, authorizing a deposit of funds in trust by foreign insurance companies for the benefit of their policy holders and creditors in the United States, provides that such deposit, together with the deposit made under the provisions of section 79, shall "constitute the assets of such company as regards its policy holders and creditors in the United States."

I appreciate the force of your suggestion, that "it is impracticable for the Insurance Commissioner to ascertain the 'capital and surplus' of a foreign insurance company if those words are taken in the widest signification; there being no method by which the department can call for a verification of the company's statements as to such foreign capital, or for an examination of its for-

eign assets." But I do not think this difficulty is sufficient to override the express provisions of the statute. The expression "capital and surplus, wherever they may be," cannot be construed intelligibly unless it is held to include the property and assets of a foreign insurance company, whether in the United States or at the home office of such company. When an expression is used, the meaning of which is beyond question, it cannot be interpreted as having a different meaning merely because the statute in which it occurs thereby becomes difficult of execution. It is to be presumed that the Legislature had the difficulties suggested in mind, and used the language referred to in view of and notwithstanding such difficulties.

The language of the statute of 1898 differs essentially from that of section 20 of the Massachusetts insurance statute. The prohibition in the latter was against insuring in a single hazard more than one-tenth of "its net assets." The word "assets" in that connection undoubtedly includes only the assets recognized as such in section 83 of the same statute above quoted. The substitution in the statute of 1898 of the expression "capital and surplus, wherever they may be," for the words "net assets," as used in the former statute, is significant, and in my judgment conclusive.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Spanish War. — Soldiers and sailors.— State pay.

The war between the United States and Spain began April 21, 1898, and soldiers and sailors who mustered into the military or naval service of the United States previous to that day are not entitled to State aid under St. 1898, c. 561.

His Excellency ROGER WOLCOTT, *Governor.*

AUG. 16, 1898.

DEAR SIR: — I beg to acknowledge the receipt of a communication from the city clerk of Gloucester, referred to me by Your Excellency, and which I herewith return.

St. 1898, c. 561, § 1, provides in substance that there shall be paid out of the treasury of the Commonwealth to each soldier or sailor "who has been or is hereafter mustered into the military or naval service of the United States during the present war as a part of the quota of or to the credit of this Commonwealth, and to members of the Massachusetts naval militia mustered into the service of the United States, also to residents of Massachusetts mustered into the regular army or navy or into the volunteer brigade of engineers of the United States during the present war, the sum of seven dollars per month."

It is beyond question that under these provisions the allowance of seven dollars per month can be paid only to soldiers or sailors who enlisted into the service of the United States during the present war. The language is explicit, and is not capable of any other reasonable construction.

This being so, it becomes necessary to determine the time of the beginning of the war. The word "war," as used in legislation, refers not to the actual, but to the official, relations between the United States and other nations. Acts of belligerency or violence do not of themselves constitute war. Declaration of war is the exclusive prerogative of the Congress of the United States (U. S. Const., Art. 1, Sect. 8), and war exists only when it has been declared by act of Congress.

On the 25th of April of this year an act of Congress was approved, entitled, "An act declaring that war exists between the United States of America and the kingdom of Spain." The act declared that "war exists and has existed since the twenty-first day of April, A.D. 1898, including said day, between the United States of America and the kingdom of Spain." The beginning of the war, therefore, must be taken to be the twenty-first day of April last. All persons who enlisted prior to that date, whether a longer or a shorter time before, are alike excluded from the benefits of the act.

No other reasonable construction can in my opinion be given to the act, and the cases of hardship suggested in the letter referred to me do not affect the question. I fully appreciate the apparent injustice arising from the fact that men enlisted into the regular service on April 21 are entitled to receive State aid, while those who enlisted on the 20th are not so entitled. But this consideration does not properly affect the question. It is the duty of the law officer to interpret the law as he finds it, not as he thinks it should be.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

School teachers.—Salaries.—School fund.

St. 1898, c. 496, § 1, raises the minimum school year from twenty-four to thirty-two weeks. If the aggregate sum paid teachers by a town for thirty-two weeks' work is the same as the aggregate sum previously paid them for twenty-four, the effect is that the town reduces their salaries, and the Board of Education has not the right to approve a payment from the income of the school fund to such town under St 1896, c. 408.

AUG. 23, 1898.

FRANK A. HILL, Esq., *Secretary, State Board of Education.*

DEAR SIR:—St. 1896, c. 408, provides that there may be paid from the income of the school fund to certain towns a sum not exceeding two dollars per week for the actual time of service of each teacher employed in the public schools of said town, which sum shall be added to the salary of such teacher: “*provided*, that the amount paid by the town toward the salary of such teacher shall not be less than the average salary paid by said town to teachers in the same grade of school for the three years next preceding.”

When this statute was enacted, the minimum school year was twenty-four weeks; but by St. 1898, c. 496, § 1, the minimum is raised from twenty-four to thirty-two weeks. The question stated in your letter of August 18 is, in substance, whether, if the pay of a teacher for thirty-two weeks amounts in the aggregate to as much as the sum heretofore paid for twenty-four weeks' service, the average salary remains the same.

In the case supposed there is obviously a reduction of salary. The salaries of teachers in smaller towns are usually paid weekly. The statute under consideration (St. 1896, c. 408) provides for the addition of two dollars *per week* to the salary of a teacher. If a school teacher has been paid one hundred and forty-four dollars for twenty-four weeks' work, it is beyond question that the same aggregate sum for thirty-two weeks' work amounts to a reduction of salary.

This would be true, even if the teacher received an annual instead of a weekly salary. The contract in such a case would be for the performance of twenty-four weeks' work for one hundred and forty-four dollars. A contract for thirty-two weeks' work at the same annual salary is in effect a reduction.

I am of opinion, therefore, that the Board of Education has not the right to approve a payment from the income of a school fund to a town which pays its teachers no more for thirty-two weeks than it has previously paid for twenty-four weeks' work, but that such a change in the compensation of a teacher, although the aggregate amount remains the same, is in effect a reduction of salary.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Schools. — School fund. — School year.

The word "year" in St. 1898, c. 496, § 1, requiring towns to maintain public schools for thirty-two weeks in each year, is to be construed as meaning the financial year of the town,— the year for which the annual appropriations are made.

AUG. 24, 1898.

FRANK A. HILL, Esq., *Secretary, State Board of Education.*

DEAR SIR:— St. 1898, c. 496, provides in section 1 that every town and city shall maintain public schools for thirty-two weeks in each year. This is an increase of the minimum school year, which was formerly twenty-four weeks. Your letter of August 10 states that distribution of the school fund by the Board of Education is conditional upon compliance by towns and cities with the provisions of law relating to maintenance of public schools; and that it is important, therefore, to know when the year referred to in the statute begins, during which schools must be maintained for a period of thirty-two weeks.

The meaning of the word "year" as used in the statutes is to be determined from the context. It does not necessarily mean the calendar year. *Howe v. Boston Carpet Co.*, 16 Gray 493, 497. The act in question takes effect Sept. 1, 1898. This is the approximate date of the beginning of the school year; and if there were no other controlling considerations, the word "year" might be taken to refer to the school year. The act, moreover, contains many other sections in addition to the one under consideration. It is in effect a codification of existing statutes relating to school attendance and truancy. Many of its provisions, such, for example, as those relating to compulsory attendance of children, truancy and truant officers, would naturally go into effect at the beginning of the school year, and the date fixed for the operation of the act undoubtedly has reference to such provisions.

But there are obvious difficulties in holding that the section under consideration refers either to the school year or to the calendar year. Under the scheme of town governments the appropriations for the year are made at the annual meeting, which by law must be held in February, March or April of each year. The amount to be expended upon public schools is then fixed, and the assessments and taxes for the year are based upon the amounts then appropriated. Although the school year usually begins in September, the financial arrangements for the continuance of public schools and the length of time which they must be kept open have been made at the annual meeting in the spring. If, therefore, the section under consideration be taken to be in force on the first day of September in the current year, it would be

necessary for all towns which have heretofore maintained schools only for the period of twenty-four weeks, as previously required, to hold special town meetings for the purpose of making additional appropriations to comply with the law. I do not think the Legislature so intended; but, on the contrary, that when an obligation concerning the maintaining of public schools, which involves the expenditure of money, is imposed upon a town, such a statute is to be construed as being in force only from the beginning of the financial year, unless otherwise specially provided.

This construction derives much support from the consideration of other sections of the same statute. Section 8 provides that when a child belonging to a neighboring town resides in another town for the sole purpose of attending school there, the latter town shall be paid a sum equal to the average expense of such school per pupil during the year next preceding. It is obvious that the year referred to in this section is the financial year. It would be difficult, if not impossible, to ascertain the average expense of a school per pupil during any other period than the financial year. Section 17 provides that the chairman of the school committee shall annually on or before the last day of April transmit to the State Board a certificate of the amount raised by the town for the support of public schools during the preceding year. Here, again, the word "year" obviously refers to the financial year. It may also be noted that section 16 provides for a census of all the illiterates to be taken on the first day of September annually, the first census to be taken in the year 1899. This provision, too, indicates that it was the intention of the Legislature that the statute, so far as it imposes upon towns the financial burden of a longer school year, should not become operative until the beginning of the financial year or some time in the year 1899.

Upon the whole, therefore, I am of the opinion that the year referred to in section 1, requiring schools to be kept for a period of thirty-two weeks in each year, is to be construed as meaning the financial year of the town; that is to say, the year for which the annual appropriations are made, and that no additional burden is laid upon towns during the present financial year.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Insurance. — Ancient Order of United Workmen. — Fraternal beneficiary association. — Assessments. — Foreign corporation.

The Grand Lodge of the Ancient Order of United Workmen, a fraternal beneficiary association incorporated in this Commonwealth, has no right to assess its members for the purpose of paying the proceeds over to the Supreme Lodge of the Ancient Order of United Workmen, a foreign corporation, to be disbursed by it to pay benefits to persons not members of the Massachusetts corporation.

AUG. 26, 1898.

Hon. FREDERICK L. CUTTING, *Insurance Commissioner.*

DEAR SIR: — The Grand Lodge of the Ancient Order of United Workmen of Massachusetts is a fraternal beneficiary association, incorporated Feb. 9, 1883, under the provisions of Pub. Sts., c. 115. It is now subject to the provisions of St. 1898, c. 474, which is in substance a codification of the laws relating to fraternal beneficiary associations.

This corporation owes allegiance to the Supreme Lodge of the Ancient Order of United Workmen, a corporation organized under the laws of the State of Kentucky, and not admitted to do business in this Commonwealth. The allegiance of the Massachusetts corporation, however, to the Supreme Lodge must be subordinate to its obligations under the statutes of Massachusetts.

At the last session of the Supreme Lodge a law (so called) was enacted providing for a special war relief fund, from which shall be paid all losses which occur from injuries or disease contracted by its members while in the service of the United States. This fund is not disbursed by the Grand Lodge, the Massachusetts corporation, but is to be paid to the Supreme Lodge, to meet the death losses of this kind in all jurisdictions. In order to raise this fund, a special relief assessment of fifty cents has been levied upon each member of the order in good standing on the first day of August, 1898; and the officers of the Supreme Lodge have called upon the members of the Massachusetts corporation for the payment of the first assessment.

The question stated in your letter of August 15 is whether this assessment is legal. The statutes regulating fraternal beneficiary associations in this Commonwealth distinctly contemplate that the assessments levied upon the members of a corporation organized under their provisions and subject to them shall be expended only for the benefit of the members of such corporations. A corporation has no right to assess its members for the purpose of paying the proceeds to a foreign corporation, to be disbursed by such foreign corporation for the purpose of paying benefits to persons not members of a Massachusetts corporation.

The precise question submitted by your letter arose in *Lamphere v. Grand Lodge*, 47 Mich. 429; and it was held in that case that a member of the defendant corporation could not be required to pay such assessment, or be suspended from membership by reason of his refusal so to do.

The assessment is clearly illegal.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Boston Elevated Railway Company.—Computation tax.—Distribution.—Special legislation.

Under St. 1897, c. 500, the Tax Commissioner has nothing to do with the assessing or distributing of the computation tax of the Boston Elevated Railway Company.

That statute makes it the duty of the company to pay its computation tax to the Treasurer of the Commonwealth, and the duty of the Treasurer to distribute the tax among the different cities and towns in proportion to the mileage of elevated and surface main tracks, reckoned as single track, which is owned, leased or operated by the company and located therein; but it does not provide any means of officially advising the Treasurer of the mileage of track owned, leased or operated by the company in the different cities and towns, and he cannot distribute the tax until special legislation is enacted providing means for so advising him.

AUG. 30, 1898.

Hon. CHARLES ENDICOTT, *Tax Commissioner*

DEAR SIR:—Your letter of August 15 requests the opinion of the Attorney-General as to the duties of the Tax Commissioner in assessing and distributing the computation tax of the Boston Elevated Railway Company, under the provisions of St. 1897, c. 500, § 10.

The section in question provides that the corporation shall "be annually assessed and shall pay taxes now or hereafter imposed by general law in the same manner as though it were a street railway company, and shall, in addition, as compensation for the privileges herein granted, and for the use and occupation of the public streets, squares and places, by the lines of elevated and surface railroad owned, leased and operated by it, pay to the Commonwealth, on or before the last day of November in each year, during said period of twenty-five years, an annual sum, the amount of which shall, in each year ending the last day of September, be determined by the amount of the annual dividend paid in that year by said corporation." Then follow provisions for determining the amount. The section further provides that: "The above sum shall be paid into the treasury of the Commonwealth and dis-

tributed among the different cities and towns in proportion to the mileage of elevated and surface main tracks, reckoned as single track, which is owned, leased or operated by said corporation and located therein."

It is apparent that this statute does not make it any one's duty to assess the franchise tax upon the company, nor is any provision made for advising the Treasurer of the Commonwealth of the mileage of elevated and surface main track of the company located in any city or town. The company is simply required to pay its franchise tax into the treasury of the Commonwealth, and presumably the Treasurer is to distribute it among the different cities and towns in proportion to the mileage of elevated and surface main track which the company controls in the different towns and cities; but he cannot do that until he is officially advised of the mileage of elevated and surface main track the company controls in the different cities and towns.

St. 1898, c. 578, § 28, provides that "the return by the Boston Elevated Railway Company to the Tax Commissioner under the provisions of section thirty-eight of chapter thirteen of the Public Statutes shall also contain a statement under the oath of the treasurer of said company giving the length of the track operated by it in each city and town in the Commonwealth on the thirtieth day of September next preceding the date of the return;" and it further provides that "prior to the first day of November in each year, the Tax Commissioner shall apportion the amount of the tax for which the Boston Elevated Railway Company and any other street railway company whose railways are now owned, leased or operated by it, are liable under the provisions of chapter thirteen of the Public Statutes, among the several cities and towns, in proportion to the length of tracks owned by said Boston Elevated Railway Company and by each of said other street railway companies in said cities and towns respectively." It also provides that "The Tax Commissioner shall notify the treasurers of every such city and town of the share of said tax so apportioned to each city and town, and he shall also certify to the Treasurer of the Commonwealth the shares thus apportioned."

But this statute applies only to the taxes assessed against the Boston Elevated Railway Company under the provisions of Pub. Sts., c. 13, § 38, and does not make any reference whatever to the computation tax assessed in accordance with St. 1897, c. 500, § 10.

It is apparent, therefore, that the Tax Commissioner has nothing to do with the assessing or distributing of the computation tax of the company. No assessment is provided for. The corporation is required to compute the amount of the tax and to pay it

to the Treasurer of the Commonwealth. The Treasurer cannot distribute the tax until special legislation is enacted providing some means for officially advising him of the mileage of elevated and surface main track owned by the company in the different cities and towns.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Certificate of condition. — Foreign corporation. — Manufacturing corporation.

Barrett, Nephews & Co., a corporation organized under the laws of New York, "for the purpose of conducting and carrying on the business of dyeing cotton, silk, woollen and other fabrics and all the business pertinent thereto and connected therewith," having its factories in New York, and a usual place of business in this Commonwealth, is not a "manufacturing company," within the meaning of those words in St. 1891, c. 341, and is not exempt from filing its certificate of condition under that statute.

SEPT. 1, 1898.

Hon. CHARLES ENDICOTT, *Commissioner of Corporations.*

SIR: — Your letter of May 16 requests the opinion of the Attorney-General upon the question whether Barrett, Nephews & Co., a corporation organized under the laws of the State of New York, and having a place of business in Massachusetts, is exempt from filing a certificate of its condition under St. 1891, c. 341.

Its claim of exemption is based upon the allegation that it is a manufacturing corporation, doing its manufacturing wholly without the Commonwealth. The exact question, therefore, is, whether it is a manufacturing corporation within the meaning of the statute referred to. The words of the statute are as follows: "All corporations chartered or organized under the laws of another State or country and having a usual place of business in this Commonwealth, shall annually in the month of March make and file in the office of the Secretary of the Commonwealth a certificate, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the amount of its capital stock as it then stands fixed by the corporation, the amount then paid up, and the assets and liabilities of the corporation, in such form as the Commissioners of Corporations shall require or approve. This section shall not apply to railroad companies, nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the Commonwealth."

It is to be observed that the statute above quoted, being a requirement in the nature of a condition imposed by the Commonwealth upon foreign corporations which by comity are allowed to

do business within our jurisdiction, is to be construed as to its exceptions strictly in favor of the Commonwealth. The purpose of the statute is plain. It is to afford individuals doing business with foreign corporations the same opportunity to obtain authentic information as to their financial standing as, by other statutes, is afforded to them in the case of domestic corporations.

The Commonwealth may impose any requirement it sees fit as a condition precedent to the admission of a foreign corporation to do business in this State. *Attorney-General v. Bay State Mining Co.*, 99 Mass. 148, 153.

Unless the corporation seeking to be exempt from this general law brings itself clearly within the terms of the exemption, it must be held to be within the general provisions of the statute.

The declared purpose of the company in its charter is thus stated: "The objects for which the company is to be formed are for the purpose of conducting and carrying on the business of dyeing cotton, silk, woollen and other fabrics, and all the business pertinent thereto and connected therewith."

It is doubtful if the Commissioner of Corporations has the right to look beyond the words of the charter to ascertain the character of the corporation. If other sources of information are open for the purpose of ascertaining the true character of the business carried on by the corporation, I understand that I am to assume as a fact that the corporation in question, although the greater part of its business is the ordinary business of a dye house, is also engaged to a considerable extent in treating cotton cloth in such a way as to produce material for Holland shades. This process consists in taking the cotton cloth from the loom, and, by bleaching, dyeing, sizing and otherwise finishing it, making it merchantable to retail trade. It is admitted, however, by the company, that this, though an important, is not the largest part of its business; and that the dyeing and cleansing of garments and other similar goods is still its principal industry.

The word "manufacture" has been the subject of numerous decisions in this Commonwealth and elsewhere. A corporation formed for the purpose of refining coal and coal oil and preparing them for use in trade as illuminants was held, in *Hawes v. Petroleum Company*, 101 Mass. 385, to be a manufacturing corporation. The business of manufacturing and distributing gas (Commonwealth *v. Lowell Gas Company*, 12 Allen, 75) and of producing and supplying electricity (*People v. Wemple*, 129 N. Y. 543) has also been declared to be manufacturing.

On the other hand, corporations engaged in the business of quarrying stone (*Wellington v. Belmont*, 164 Mass. 142), of cutting

and distributing ice (*Hettinger v. Westford*, 135 Mass. 258), of slaughtering cattle (People *v.* New York Dressed Meat Co., 50 N. E. Rep. 53), of mixing tea and grinding coffee (People *v.* Roberts, 145 N. Y. 375), of constructing and using dry docks (People *v.* Dry Dock Company, 92 N. Y. 487), were held not to be manufacturing corporations.

Holmes, J., in *Ingram v. Cowles*, 150 Mass. 155, 157, says: "We hesitate to say that sawing logs into boards is a 'branch of manufactures,' and think it doubtful whether something more of a transformation of the raw material is not necessary to bring the employment within the clause." On the other hand, however, there can be little doubt that the manufacture of shingles, clap-boards, door frames and other like specific articles of commerce is manufacturing.

In several of the cases cited, manufacturing is defined to be a process for the production of some new article by the application of skill and labor to raw materials. It is obvious, however, that the term "raw materials" must be taken to be used relatively. The conversion of wool into yarn is manufacturing; but the conversion of yarn into cloth, and of cloth into garments, is also manufacturing, although neither yarn nor cloth are, strictly speaking, raw materials.

I apprehend that the true definition of manufacturing, as that word is used, not only in commerce, but in legislative enactments, is the production, by the application of skill, labor and machinery, of an article of commerce different in its character and use from the material employed. When, on the other hand, no new article of commerce is produced, and the operation consists merely of work done upon an article to improve its usefulness or value, without changing its commercial character, such an operation is not manufacturing.

Applying these distinctions to the business of the corporation in question, as stated in its charter, I find no difficulty in reaching the conclusion that it is not a manufacturing corporation. The process of dyeing garments and other fabrics does not ordinarily change their essential character as articles of commerce. If, therefore, the question is to be determined by consideration of the declared purposes of the corporation, it is not a manufacturing corporation, and is not within the exemption of the statute.

I do not deem it necessary to determine whether you would be authorized in any case to receive evidence that the business of the corporation is more extensive than the purpose stated in its charter; for, upon the facts stated, I am of opinion that it has not brought itself within the meaning and spirit of the exception in the

statute. Barrett, Nephews & Co. is a corporation organized for the purpose of carrying on the business of dyeing. As such, it is not exempt from making the returns required by the statute in question. The fact, if admissible, that, in addition to its dyeing business, it is engaged to some extent in the conversion of cotton cloth into Holland shades, does not change its essential character. It is not thereby brought within the class of manufacturing corporations.

While it may not be necessary to hold that a corporation should do a manufacturing business exclusively in order to make it a manufacturing corporation, and I do not so advise you, yet, if the principal business is not a manufacturing business, it is not, in my judgment, a manufacturing corporation within the meaning of the statute, although, in addition to its regular business, it is incidentally or even largely engaged in processes that, considered by themselves, might be classed as manufacturing.

I am informed that the corporation relies upon the case of Cambridge Water Works *v.* Somerville Dyeing Company, 4 Allen, 239. This was a suit seeking to charge the directors of the defendant corporation for its debts, under a statute making directors of manufacturing corporations liable in certain cases for the debts of the corporation. Upon examination of the case, however, it will be found that the question whether the defendant was a manufacturing corporation was not considered nor determined by the court. The case went up on a demurrer which admitted the allegations to the bill, among them, that the corporation in question was a manufacturing corporation. No question as to the *status* of the corporation was, or could, under the pleadings, be considered by the court.

Without finally determining how far the carrying on of a manufacturing business may bring a corporation formed for other purposes within the exemption of the statute, it is sufficient in the present case to say that, upon the facts stated, I am of opinion that the corporation in question is not a manufacturing corporation.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Board of Education. — Duties. — School committees.

It is not the duty of the Board of Education to enquire whether members of the school committees of towns are duly elected and qualified, but to treat those persons who *de facto* hold the office of school committee as duly elected and qualified.

SEPT. 2, 1898.

F. A. HILL, Esq., *Secretary, Board of Education.*

DEAR SIR:— Your letter of the 29th ult. submits certain questions relating to the legality of the election and qualification of members of the school committees of towns. The request is based upon the assumption that it is necessary for you, in the performance of your duties, to determine whether the persons who sign certificates "are legally qualified to serve as members of their respective committees."

If it were, as you suggest, necessary that you know absolutely who is entitled to hold the office of school committee in each of the towns within your jurisdiction, your question would be pertinent, and you would be entitled to the opinion of the Attorney-General. Such is not the case, however. It is your duty to deal with those persons who *de facto* hold the office of school committee, whether by election by the people or by the committee to fill vacancies existing or supposed to exist. Whoever is so elected and is actually in occupation of the office is to be regarded by you as the rightful officer, for the purpose of making the returns and transacting the business required to be done with the Board of Education.

It, therefore, is not important for you to know whether the members of the school committee hold their offices *de jure*, or whether they must be sworn to the performance of their duties, or whether a vacancy declared by the school committee to exist and filled by the election of a new member in fact exists or not. Those are contentions which must be settled by the parties. In your relations with the school committees it is your right and duty to deal with those who are *de facto* holding the office.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Metropolitan Park Commission. — Selectmen. — Parkways. — Street railways. — Locations.

When highways are taken by the Metropolitan Park Commission for parkways, they acquire the same control over them as over the lands of private persons taken for the same purpose.

Neither the Metropolitan Park Commission nor the selectmen of towns have any authority to grant locations to street railway companies on parkways or over the public parks.

SEPT. 15, 1898.

JOHN WOODBURY, Esq., *Secretary, Metropolitan Park Commission.*

DEAR SIR: — Your letter of August 19 requires the opinion of the Attorney-General upon the question whether the Metropolitan Park Commission is authorized to grant street railway locations in parkways and public reservations under the care of the Board. Your letter of August 25 states that a request has been received from the Boston, Milton & Brockton Street Railway Company for the approval by the Metropolitan Park Commission of certain locations granted that company by the selectmen of Milton on the Blue Hills parkway; and requires the opinion of the Attorney-General upon the question whether the selectmen of Milton have the power to grant street railway locations on the Blue Hills parkway, either the parts thereof which were formerly highways, or the portions which were taken from private owners. Both the questions submitted involve the same general considerations, and may be discussed together.

The authority to grant the use of public ways for street railways belongs primarily to the Commonwealth. Highways and townways, though to some extent under the control of municipal authorities, who for the most part are required to keep them in repair, yet belong, not to the municipalities, but to the public. No person or corporation may have or acquire special rights or easements in such ways excepting by authority of the Legislature or of some tribunal to whom authority has been committed by the Legislature. City and town authorities have no power to grant rights in public ways except so far as authorized by statute, and then only in the manner and upon the conditions prescribed by the statute. *Beekman v. Third Avenue Ry. Co.*, 153 N. Y. 144. The Legislature without consulting a town may grant a location to a street railway. *Central Ry. & Electric Co.'s Appeal*, 67 Conn. 197. The Legislature may act thus directly, or it may exercise this function of location through such agents as it sees fit. As a matter of convenience, the statutes of the Commonwealth have delegated this authority in towns to the selectmen, who, however, act not as officers of the town, but as a body of men upon whom the

public duty has by law devolved. *Cambridge v. Cambridge R.R. Co.*, 10 Allen, 50-57; P. S., c. 113, § 7; St. 1898, c. 578, § 13.

The authority thus conferred upon the selectmen is, however, limited to highways and townways. It does not extend to parkways constructed by the Metropolitan Park Commission. These are not highways, in the sense in which that term is usually employed. They are constructed under the authority of St. 1894, c. 288, § 1, which provides that "The board of metropolitan park commissioners . . . is hereby authorized to connect any road, park, way or other public open space with any part of the cities or towns of the metropolitan parks district . . . by a suitable roadway or boulevard . . . and also to take or acquire in fee or otherwise . . . any lands or rights or easements or interest in land within said district, although the land so taken or any part thereof be already a street or way, and to construct . . . a suitable roadway or boulevard." When a public way is taken under this act, it ceases to be a public way and becomes a parkway.

I am informed that the Blue Hills parkway was constructed by the Metropolitan Park Commission by taking for that purpose the public highways known as Mattapan Street and Blue Hill Avenue, and, in addition, lands of private persons on both sides thereof. When those highways were so taken for the purposes of a parkway, the Park Commission acquired the same right or control over them as over the private lands also taken for the same purpose. Their right to control the parkway is the same over the part taken from the public as over the part taken from individuals. All rights and powers before vested in towns and town officers were taken away, and the entire control of the parkway was vested in the Park Commission. St. 1894, c. 288, § 3, provides that the Board "shall have the same rights and powers over and in regard to the roadways or boulevards taken and constructed hereunder as are or may be vested in them in regard to other open spaces, and shall also have such rights and powers in regard to the same as, in general, counties, cities and towns have over other public ways under their control." This statute must be construed to take away all rights over such parkways which formerly belonged to towns or to town officers, and to vest the same exclusively in the Metropolitan Park Commission. The selectmen of Milton, therefore, have no longer the right to grant locations therein, either in the portion which was taken from private owners or in the part which was a public way.

It by no means follows, however, that such power has been given to the Metropolitan Park Commission; or that it was the

intention of the Legislature to authorize the commission to grant locations for street railways either over the public parks or upon the boulevards under their care.

The statute above quoted, giving them the rights and powers in regard to the same as counties, cities and towns have over other public ways, does not expressly or by implication confer the power to grant street railway locations. As I have already stated, this power never vested in counties, cities or towns, but was devolved upon municipal boards, not as agents of the cities and towns, but as public officers acting by authority of the Legislature. It is not to be presumed that the authority to grant such locations, although taken away from the municipal boards, was conferred upon the Metropolitan Park Commission, unless there is some statute directly conferring such power. Street railway locations are in the nature of grants to private corporations carrying on business for the profit of their stockholders. They are authorized to use public property because they serve the public. Such authority, however, can come only by express grant of the Legislature, or by the grant of some body or tribunal to whom the power of granting locations has been expressly delegated.

I find no such authority delegated to the Metropolitan Park Commission. On the contrary, the powers and duties of that Board have been carefully guarded in such a way as to prevent them from authorizing the use of such reservations in any way inconsistent with the purposes for which they were created. Those purposes are clearly stated by the Legislature. St. 1893, c. 407, § 4, authorizes the Board to acquire, maintain and make available open spaces for exercise and recreation. It is clear that the granting of a street railway location would be inconsistent with this purpose. By St. 1894, c. 288, § 1, the Board is authorized to connect these open spaces with any part of the cities or towns of the metropolitan districts by suitable roadways or boulevards, and to have (section 3) the same rights and powers over such boulevards as are vested in them in regard to other open spaces by previous statutes. Boulevards are thus made connecting parkways open to the use of the public, to be maintained and kept open for the use of the public in connection with the parkways under the control of the Board. They do not become public highways, with the incidents attaching thereto, but remain parkways, acquired and constructed solely for the use of the public, as parkways. It would be, in my opinion, inconsistent with such use to grant street railway locations in them or in the open spaces.

It may be claimed that the language of St. 1895, c. 450, § 1, is intended to delegate such authority to the commission. I quote

the section: "The metropolitan park commission may, for all purposes not inconsistent with the purposes specified in the act establishing said commission, and acts in amendment thereof and in addition thereto, erect, maintain and care for buildings, and, by deed executed, acknowledged and recorded according to the laws of the Commonwealth, grant or accept and assent to any deed containing reservations of easements, rights of way and privileges in life estates, estates for the life of another and estates for years, including leases in, upon, under and over any portion of the lands now or hereafter taken or acquired by it, all for such considerations and rentals and upon such terms, restrictions, provisions or agreements as said commission may deem best."

The word "easements," as used in the statute quoted, may be broad enough to include a grant to a street railway of the right to lay its tracks upon parkways and parks. But the whole clause is to be construed together. The easements which the Park Commission are authorized to grant or accept are "reservations of easements, rights of way and privileges in life estates, estates for the life of another, and estates for years" over any portion of the lands now or hereafter taken or acquired by it. It is plain that the easements intended are those granted or reserved to those who deed their land to the Board, and not peculiar special rights in behalf of corporations generally. The easements referred to are mentioned in the same clause with life estates and estates for years. The whole sentence is to be construed together. So construed, it is clear that the Legislature did not intend by such indirection of language to delegate to the commission the right to grant the use of parkways committed to its care for street railway corporations. Such a use would be "inconsistent with the purposes specified" in the acts creating the parks and parkways and defining their duties.

A further question arises in the case of parkways upon the construction of St. 1896, c. 465, § 1, which is as follows: "Whenever by reason of a taking by the Commonwealth through its metropolitan park commission . . . an existing public street is so affected that the public rights therein might otherwise be abridged, either by being wholly or in part included within the taking, any and all exceptions and reservations made in said taking in favor of any municipality within which said street or any part thereof may lie, and of the public, and of any corporations or individuals, shall be valid, effectual and binding; and in order to insure to the parties from time to time concerned the full and perfect enjoyment of the uses thereby reserved said board is hereby authorized and empowered from time to time to make grants or conveyances

of easements, to enter into agreements, to issue licenses, and generally to conclude arrangements to that end." This section obviously refers to the rights and easements existing at the time of the taking of a public way. The right of travelling on such a way is an easement enjoyed by the public. The right of maintaining tracks thereon for the purpose of public travel is an extension of such easement. So, too, water pipes, gas pipes and sewers are easements within the meaning of that word as used in the statutes. The intention of the Legislature, therefore, was to authorize the Park Commission in taking an existing way for park purposes, to make such arrangements as in their discretion seems proper to continue and insure to the parties, whether the public, or private persons and corporations, the easements reserved to them in such taking. If, therefore, the Board acquires an existing way in which the public generally have the right of travel, and municipal and other corporations have easements therein, such as rights to maintain street railway tracks, gas pipes, sewers and other things for which easements have heretofore been granted, the Board may under this statute continue and insure [assure] the right to the further use of such easements, private and public. It does not, however, and in my opinion was not intended to, authorize the granting of new easements inconsistent with the purposes of the creation of such parkways. Public and private easements existing when the parkway is acquired may be respected by the commission in its discretion, but this power is very far from authorizing the Board to grant new locations.

In the absence of any express authority, I am of opinion that the Metropolitan Park Commission will perform its duty and carry out the intention of the Legislature by refusing to grant locations for street railways upon public lands and parkways under its care.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Insurance companies. — Annual statements. — Public documents.

The annual statements of insurance companies filed in the office of the Insurance Commissioner are not public documents, and the public generally has no right of access to them.

SEPT. 15, 1898.

Hon. FRED'K L. CUTTING, *Insurance Commissioner.*

DEAR SIR: — Your letter of September 8 requires the opinion of the Attorney-General upon the question whether the annual statements filed with the insurance department by insurance companies, as required by law, "are public documents to which any citizen is entitled to have access."

The statutes of the Commonwealth vest in the Insurance Commissioner large powers of supervision over companies authorized to do business in this State. In the exercise of those powers it is made his duty to keep informed as to the financial condition of such companies. Upon him is devolved the responsibility of protecting the public against unsound and unsafe insurance; and he may, when satisfied that the condition of an insurance company is such as to render the further prosecution of its business hazardous, take proceedings to have it enjoined from doing business.

To the end that he may be so informed, St. 1894, c. 522, § 96, provides that every company "shall annually, on or before the fifteenth day of January, file in the office of the Insurance Commissioner a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year." By section 17 of the same statute the commissioner is required to include in his annual report to the Legislature "an exhibit of the financial condition and business transactions of the several insurance companies as disclosed by official examinations of the same and by their annual statements, abstracts of which statements . . . shall appear therein."

It is plain that the reports so required of insurance companies are not for the information of the public, but for the use of the commissioner in the discharge of his duty of supervision. The public generally, therefore, has no right of inspection of such returns. As appears by the section above quoted, it is his duty to furnish to the Legislature an abstract of such statements, and the General Court may, of course, at any time call for the production of the returns; but otherwise than through the General Court the public generally has no right of access to them. Opinions of the Attorney-General, report of 1896, page 71; report of 1895, page 99.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Constables. — Fees. — Official services.

A constable cannot receive a salary for a part of his official services and fees for the rest.

Testifying as a witness in a criminal case is no part of his official duty, and he may receive witness fees therefor, unless he is in attendance upon court during the time he is on duty as an officer.

SEPT. 15, 1898.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts.*

DEAR SIR:—St. 1890, c. 440, § 1, provides that no constable who receives a salary shall be paid any fee or extra compensation whatever for any official service rendered in a criminal case. The

question stated in your letter of August 2 is, whether a constable may be designated by the justices of the district court to attend the sessions thereof at a fixed salary, "with the understanding that he should serve mittimus and receive fees therefor, the salary fixed being only for attendance upon the court, and preserving order therein."

The statute quoted is explicit in its terms. No constable who receives a salary shall be paid any fee for official services in any criminal case. It was the obvious intention of the law to prohibit salaried officers from being interested in fees. The arrangement suggested would therefore be unlawful.

The last clause of the section, a portion of which is quoted above, prohibits a constable from receiving fees "for testifying as a witness in any such criminal case during the time for which he receives such salary or allowance." The words "during the time for which he receives such salary or allowance" refer only to the clause quoted. There are, for example, many constables and police officers who are employed and paid for night work. If such officers were called into court during the day, it was the intention of the Legislature that they should be paid their fees for travel and attendance as witnesses, such service being no part of their official duties, and not being performed during the time of their employment.

The statute expressly prohibits officers from receiving fees for any official service whatever in criminal cases. Testifying in court as a witness is not an official service. The statute however, prohibits them from receiving fees, if during the time of such attendance they are on duty as officers; otherwise, they may be paid their witness fees.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Attorney-General.—Clerks of courts.—Metropolitan parks.—Fines
It is not the duty of the Attorney-General to advise clerks of courts, and
those officers are not bound by his opinion. The language of St.
1897, c. 121, § 2, providing that "all fines recovered for violations
of law within the limits of the lands, roadways or boulevards" under
the care of the Metropolitan Park Commission "shall be accounted
for and paid to the Treasurer and Receiver-General of the Com-
monwealth," is to be construed as including only such fines as are
recovered for violation of the rules and regulations made by the Park
Commission under authority of St. 1893, c. 407, § 4.

SEPT. 15, 1898.

JOHN WOODBURY, Esq., *Secretary, Metropolitan Park Commission.*

DEAR SIR:—Your letter of August 3 requests the opinion of
the Attorney-General upon the interpretation to be given to St.

1897, c. 121, § 2, which provides, among other things, that "all fines recovered for violations of law within the limits of the lands, roadways or boulevards" under the care of the Metropolitan Park Commission "shall be accounted for and paid to the Treasurer and Receiver-General of the Commonwealth," and be added to the funds provided for meeting the expenses of the commission. It is not the duty of the Attorney-General to advise clerks of courts in the discharge of their duty, and those officers are not bound by his opinion. The conclusion I have reached, however, upon the question submitted is in accord with what I understand to be the contention of the clerk of the district court of Chelsea. I presume, therefore, he will accept and act upon it.

The language of the act is broad enough to include all crimes which are committed within the limits of public reservations under the care of the Board. Assault and battery, illegal sales of intoxicating liquor and larceny would, under such a construction of the law, be included. I am of opinion, however, that the law is not so to be construed; but that it was intended to include only such acts as become violations of law by reason of the fact that they are done upon parks and boulevards, and not acts which would be criminal whether committed there or elsewhere within the Commonwealth. For example, a person travelling in a carriage on a boulevard, who, on meeting another person, attempts to drive to the left instead of to the right, violates the provisions of P. S., c. 93, and is liable to be fined therefor. Such a violation of law might be committed upon a reservation under the care of your Board, but it would also be an offence if committed upon any public highway within the Commonwealth. The fact that it was done upon a boulevard is not of the essence of the offence. It would be otherwise with violations of regulations made by your Board under the authority of St. 1893, c. 407, § 4. Acts done in violation of such regulations are offences because committed upon public reservations, and fines accruing therefrom would be properly payable to the Treasurer of the Commonwealth, to be added to the funds at the disposal of the Park Commission.

The rules of criminal pleadings illustrate this distinction. The ordinary complaint or indictment, whether for a local or transitory offence, does not describe the locality further than to allege the offence to have been committed in a certain town. There is nothing in the record to inform the clerk that the offence was committed upon a public reservation, and he could only ascertain the fact by hearsay. I do not think it was the intention of the Legislature to put upon clerks the duty of examining into the circumstances of offences prosecuted in their courts to that extent. If,

however, the offence is a violation of some regulation of the Board, the record discloses the fact, and his duty is clear.

Upon the whole, therefore, I am clearly of the opinion that the act in question applies only to violations of the law which become so only by reason of the fact that they are committed upon public reservations in the care of the Metropolitan Park Commission.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Special police officers. — Fees. — Constables. — Inquests.

St. 1892, c. 200, regulates the fees of officers only in cases where they make arrests for drunkenness, and the person arrested is discharged without being brought before a court.

If a person arrested by a special police officer for drunkenness in a city or town where regular officers receive salaries is brought before a court, other provisions of law regulate the fees of the officer, and St. 1892, c. 200, has no application.

If the person arrested is discharged without being brought before a court, the officer cannot be paid fees, even if a warrant is afterwards issued.

A special police officer is not a constable by virtue of being a police officer. If a special police officer is authorized to serve criminal process, he may be appointed to assist at an inquest under St. 1898, c. 204, § 2.

SEPT. 15, 1898.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts, Boston, Mass.*

DEAR SIR: — Your letter of August 1 submits a number of questions concerning the construction of St. 1892, c. 200. For convenience, I quote the statute: —

SECTION 1. When an officer whose sole compensation for services in criminal proceedings is derived from taxable fees, makes an arrest for drunkenness, and the person arrested is discharged without being brought into court or before a trial justice, the officer making such arrest shall be entitled to the same fees therefor as in cases where persons arrested are taken into court or before a trial justice, and complained against. If the arrest be made without a warrant, the officer making the same shall make a sworn statement in writing of his fees, in the nature of a return upon a precept, which statement he shall send to the court or trial justice having jurisdiction of the offence.

SECTION 2. Special police officers making arrests for drunkenness in cities and towns in which the police officers or constables receive salaries shall not be entitled to fees under this act.

Your questions are as follows: —

“ 1. In a city or town in which the police officers receive salaries, when a special police officer has made an arrest for drunken-

ness without a warrant does the issuing of a warrant after such arrest, and the making of a return thereon, with statement of fees, by such officer, entitle him to receive such fees?

“2. In the event of such an arrest, in such a city or town, when the person arrested is brought into court or before a trial justice, is the special police officer entitled to receive fees therefor either with or without making returns upon a warrant issued after arrest?

“3. In such a city or town, if a special police officer makes an arrest for drunkenness, with a warrant, is he entitled to receive fees therefor, whether the person arrested is or is not discharged without being brought into court or before a trial justice?”

Officers who receive regular salaries are not entitled to fees in criminal cases. Unsalaried officers whose compensation comes from fees are required to return their warrants to the court, where, at the conclusion of the case, their fees are taxed and allowed. It often happens, however, that persons are arrested for drunkenness, and discharged without being brought before the court. St. 1892, c. 200, above quoted, was enacted to enable unsalaried officers to obtain their fees in such cases. The Legislature, however, saw fit to provide in section 2 that in cities and towns where regular officers receive salaries, special police officers making an arrest for drunkenness should not be entitled when the person arrested is discharged without being brought into court. If in such city or town the person arrested is brought before the court, other provisions of law regulate the fees of the special police officer making the arrest, and the statute of 1892 has no application to such case. If, however, the person arrested is discharged without being brought before a court, the special officer cannot be paid fees, even if a warrant is afterwards issued.

“4. Does ‘special police officer’ in section 2 include constables?”

The term “police officer” is used in the statutes to describe a class of officers who are not constables. *Commonwealth v. Smith*, 111 Mass. 407-408. Police officers are not officers in fact or in name. They hold their offices, not annually, but at the pleasure of the mayor and aldermen or police commissioners. The provisions of section 2, therefore, do not apply to constables.

“5. (a) Is a special police officer eligible for appointment under the provisions of St. 1898, c. 204, § 2?”

St. 1898, c. 204, § 2, provides that when an inquest is to be held by any district, police or municipal court, the justice may appoint any officer authorized by law to serve criminal process,

investigate the case and to examine the witnesses, and may allow the officer so appointed such additional compensation therefor as said justice may deem proper, the same to be paid in the same manner as the fees and expenses of such officers are paid.

The answer to this question depends upon the powers of the particular special police officer in question. By P. S., c. 27, § 85, police officers may be appointed with all or any of the powers of constables, excepting the power of serving and executing civil process. While ordinarily special police officers would be given the power of serving criminal process, they might, nevertheless, be appointed without that power. *Commonwealth v. Doherty*, 103 Mass. 443, 444. If the special police officer is authorized to serve criminal process, he is eligible under the statute in question.

If a special police officer be appointed for this duty, he must be one who has received his authority to serve criminal process from the city or town in which the case arises.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Governor. — Supervisors of registration. — Appointment.

St. 1898, c. 548, requires the Governor to appoint one supervisor of registration from each of the two leading political parties for each ward in Boston, one for each voting precinct in towns divided into voting precincts, two for towns not so divided, and one for cities where apparently the Legislature did not intend to require registrars to hold sessions, except in some central locality.

One from each party should be appointed for the city of Newton.

Oct. 16, 1898.

His Excellency ROGER WOLCOTT, *Governor.*

DEAR SIR: — I have examined St. 1898, c. 548, § 60, with reference to the appointment by the Governor of supervisors of registration. The language of the section is not free from doubt. It requires the appointment of two supervisors "for each place of registration therein." If the language quoted is intended to include every place where registrars see fit to hold sessions, there is practically no limit to the number of registrars whom the Governor may be required to appoint, for the reason that there is no limit to the number of places where registrars may hold sessions for the purpose of registration.

The statute provides (section 36) that every city or town "shall provide the registrars of voters with suitable rooms in which to hold their official sessions." It further provides that they shall hold such sessions as the town by a by-law, or the city by an

ordinance, shall prescribe, and such other sessions as they deem necessary.

The statute further provides (section 37, par. 4) that they shall hold sessions at suitable places within the limits of each voting precinct, and in towns not divided into voting precincts they shall hold sessions in two or more suitable places. It is further provided that, upon the petition of ten or more voters in any town, residing in a village two or more miles from the usual place of registration, the registrars shall hold sessions at a place convenient for such petitioners.

There are also provisions special to the city of Boston, under which it is required that sessions shall be held during the month of September in one or more places in each ward (§ 74).

The law, therefore, requires in all towns and cities at least one suitable place to be furnished as an office of registration. In towns provided with voting precincts there must be places of registration in each precinct. In towns not divided into voting precincts there must be at least two places of registration, and ten voters residing at a remote locality may require an additional place of registration in such towns. There appears to be no provision requiring more than one place of registration in cities, excepting in Boston, where there must be one in each ward.

I am of opinion that it is not a reasonable interpretation of section 60 to hold that it requires the Governor to follow the registrars from place to place and to appoint supervisors in each locality, where they may choose voluntarily to hold meetings for the purpose of registration. There is no way in which the Governor may surely know where the registrars will hold their sessions. A sensible construction of the statute, in my judgment, requires only that the Governor shall appoint two supervisors for each locality where, under the statute, the registrars are required to hold sessions for registration. Thus it would be necessary to appoint one set for each ward in Boston, one for each voting precinct in towns divided into voting precincts and two in towns not so divided; but in cities where it was apparently the intention of the Legislature not to require the registrars to hold sessions, except in some central locality, the Governor is not called upon to appoint more than one set of supervisors.

This being so, I am of opinion that you will discharge the duty imposed upon you under the section by appointing one supervisor from each party for the city of Newton. I am informed that no ordinance of the city has been passed requiring additional places of registration, and that all the sessions (most of which, in fact,

have been already held) other than those in the offices designated for the use of the registrars by the city are voluntary, and not in pursuance of any requirement of law.

Yours respectfully,

HOSEA M. KNOWLTON, *Attorney-General.*

Secretary of Commonwealth.—Duty.—Trade-mark.—Music.—Orchestra. It is the duty of the Secretary of the Commonwealth to receive all certificates which are in the form required under St. 1895, c. 462, upon payment of the fee prescribed therefor, and to deliver a duly attested copy of the record of the same to the person filing the certificate. He is not called upon to determine whether the person filing the certificate will receive any protection thereby.

Music as played by an orchestra is not merchandise.

Oct. 27, 1898.

Hon. WILLIAM M. OLIN, *Secretary of the Commonwealth.*

DEAR SIR:—I am of opinion that “music, as played by an orchestra,” is not and cannot be considered as merchandise. If, therefore, the benefits of the provisions of St. 1895, c. 462, are limited to manufacturers, the filing of a form of advertisement as authorized by that act will not protect publishers of sheet music.

But there is nothing in the act itself which prohibits any person from availing himself of its provisions. It provides, in section 1, that: “Any person . . . may adopt a label, trade-mark, stamp or form of advertisement, not previously owned or adopted by any other person . . . , and may file the same for record in the office of the Secretary of the Commonwealth.” The title of the act, however, is “An Act to protect manufacturers,” etc., and the section quoted provides further on that the certificate to be filed shall state “the class of merchandise and the particular description of goods comprised in such class to which it has been or is intended to be appropriated.”

Your letter states that you have been asked to file the name of an orchestra under this law as a form of advertisement. I do not deem it necessary to consider how far such filing will protect the name of the orchestra, or whether the person filing the same can prevent others from using the same name; for, in my opinion, it is the duty of the Secretary of the Commonwealth to receive the certificates which are in apparent conformity to the provisions of the statute on payment of the fee prescribed therefor, and to deliver to the person a duly attested copy of the record of the same. The Secretary is not called upon under the act to determine the effect of such filing, or whether the person filing such certificate

will receive any protection thereby. The broad and comprehensive provisions of the act, providing in terms that "any person may file such certificate," are, in my opinion, sufficient for your guidance, and authorize you to receive a certificate which is in proper form.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Voting machine.—Written ballot.

A voting machine provided with knobs which when pressed register numbers may not lawfully be used in the election of representatives to Congress or representatives to the General Court.

A "written vote" or "a written or printed ballot" must be used.

Oct. 27, 1898.

Hon. WM. M. OLIN, *Secretary of the Commonwealth.*

DEAR SIR:—I understand that my opinion is desired upon the question whether it is lawful to vote for representatives to Congress and for representatives to the General Court by means of voting machines.

I am informed that the voting machine in question is provided with knobs or buttons, one for each candidate to be voted for, so arranged and connected that when a knob or button is pressed, a number is registered next higher than the number registered by the previous pressing of the same knob or button. The voter expresses his preference by pressing the knob appropriated to the candidate he desires to vote for. The machine thereupon registers the number of his vote, duly credited to the candidate whose knob or button he has pressed.

The Constitution of Massachusetts (chapter 1, section 3, article 3) provides that "Every member of the House of Representatives shall be chosen by written votes." United States Revised Statutes, section 27, provides that "All votes for representatives in Congress must be by written or printed ballot; and all votes received or recorded contrary to this section shall be of no effect." Without attempting to define exhaustively what may or may not be included within the words "written vote," as used in the Constitution of Massachusetts, or "written or printed ballot," as used in the United States Revised Statutes, I am of opinion that the method of voting provided by the machine in question cannot properly be said to be within the meaning of those expressions, or either of them, and that the pressing of a knob for the purpose of registering a number is not the casting of a "written vote" or a "written or printed ballot."

I am of opinion, therefore, that such voting machines cannot lawfully be used in the election of representatives to Congress or in the election of representatives to the General Court.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Attorney-General. — Duties of. — Unlicensed dogs. — Unlawful pedling.

— Penalty. — Apportionment. — Salaried officers. — Official service.

The Attorney-General, as a representative of the executive department, is not authorized and would not be justified in advising the judicial department in the performance of its duty.

Under St. 1891, c. 416, the duty of apportioning penalties recovered for keeping unlicensed dogs and for unlawful pedling devolves upon the court before whom the complaint is tried.

The making of a complaint is no part of the official duty of an officer, unless it is made so by some statute.

The officers enumerated in St. 1890, c. 440, § 1, are entitled, as complainants, to the proportion of the penalty imposed, payable by law to complainants, unless some statute makes it their duty to make complaint.

DEC. 3, 1898.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts.*

DEAR SIR: — I have your letter of the 15th ult., asking me to give further consideration to the question whether any of the officers enumerated in St. 1890, c. 440, § 1, may receive any portion of the penalty imposed in complaints for keeping unlicensed dogs and for unlawful pedling.

In a former letter to you I stated it as my opinion that under the provisions of St. 1891, c. 416, § 1, the duty of apportionment devolves upon the court. I see no reason to modify the conclusions then reached. The matter is within the jurisdiction of the court before whom the complaint is tried. The Attorney-General, as a representative of the executive department, is not authorized and would not be justified in advising the judicial department in the performance of its duty.

In view, however, of your statement that there is much diversity of opinion and practice in the matter, I am willing to state my views for what they are worth.

St. 1890, c. 440, § 1, provides as follows: —

Except as specially provided in this act, no officer in attendance on any court, and no sheriff, deputy sheriff, jailer, constable, city marshal, or other police officer who receives a salary or an allowance by the day or hour from the Commonwealth, or from any county, city or town for his official services, shall be paid any fee or extra compensation whatever for any official services rendered or performed by him in any criminal case in which the Commonwealth or any county, city or town, is a party

interested; nor for aid or assistance rendered to another officer; nor for testifying as a witness in any such criminal case, during the time for which he receives such salary or allowance.

The question submitted is, whether any officer named in the section quoted is entitled to receive a portion of the fine imposed for the keeping of a dog contrary to the provisions of law, under the statutes (Pub. Sts., c. 102, § 87) providing that one-third of the amount shall be paid to the complainant. A similar question arises upon the statute relating to the prosecution of hawkers and pedlers, Pub. Sts., c. 68, § 19, providing that one-half of the forfeiture which may be recovered in such prosecutions shall be paid to the complainant.

I am of opinion that, excepting in cases when the law imposes it upon an officer as a duty, the making of a complaint is not an official service within the meaning of that term as used in St. 1890, c. 440, § 1, above quoted. When a public officer is authorized and required to do an act because of his official position, the doing of the act by him is the performance of an official service; but whenever he does an act which he is not required by law to do and which any one else might also do, though not a public officer, it is not an official service. An illustration of this distinction is to be found in the section itself, which, after prohibiting the officers named from receiving fees for the performance of official service, further prohibits them from receiving fees as witnesses in criminal cases. The statute thus recognizes the distinction between service as a witness and official services. Although the facts to which he testifies may have come to his knowledge because he is an officer, he is, nevertheless, not testifying as an officer, nor does he appear upon the witness stand in an official capacity. The official services referred to in the section undoubtedly are the services which they are by law required to perform, and which they perform as officers and by virtue of their offices. Such, for example, are the service of writs, warrants and subpœnas. The making of a complaint, on the other hand, ordinarily is no part of the official duty of an officer. He appears before the magistrate, not as an officer, but as a witness, making affidavit to facts which have come to his knowledge. This is no more an official service than testifying in court as a witness.

It follows, therefore, that an officer, although within the terms of the prohibition of St. 1890, c. 440, § 1, is ordinarily entitled as a complainant to the proportion of the fine imposed payable by law to the complainant.

In some cases, however, it is made by statute the duty of the officer to enter complaints for violations of the statutes relating to dogs and of the statutes relating to hawkers and pedlers. Pub. Sts., c. 102, § 90, provides that the mayor of each city and the chairman of the selectmen of each town shall annually in July issue a warrant to one or more police officers or constables, directing them to kill or cause to be killed all unlicensed dogs, "and to enter complaint against the owners or keepers thereof." It is thus made the official duty of the police officer or constable to whom such warrant is directed to enter complaints against the owners of unlicensed dogs. Such complaints are entered in the performance of the official duty of the officer holding the warrant, and he is therefore not entitled to any portion of the fine recovered upon complaints so made by him.

The statute relating to hawkers and pedlers (Pub. Sts., c. 68) provides, in section 19, that constables and police officers shall within their respective towns and cities arrest and prosecute every person whom they may have reason to believe to be guilty of violating the provisions of this chapter. I am of opinion that the fair construction of this statute makes it the duty of such constables and police officers to enter complaints, and that consequently they are not entitled to receive any part of the fines recovered upon such complaints.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

Commonwealth's land. — Special taxation. — Exemption. — B Street, South Boston.

Under St. 1892, c. 418, the Commonwealth's land cannot be assessed for any portion of the cost of laying out and constructing B Street, South Boston, by the street commissioners.

DEC. 19, 1898.

Hon. WOODWARD EMERY, *Chairman, Harbor and Land Commissioners*

DEAR SIR: — St. 1892, c. 418, § 8, provides that a portion of the cost of building streets in Boston may be assessed upon the several parcels abutting thereon, in accordance with the proportion in which the board of street commissioners shall determine that the parcels are increased in value thereby.

Your letter of November 11 requires the opinion of the Attorney-General upon the question whether the Commonwealth's land at South Boston is liable for any proportion of the cost of laying out and constructing B Street by the street commissioners. I understand that the proposed lay-out is upon land belonging to the

Commonwealth, and that the Commonwealth owns the land abutting upon the street on one side.

I do not deem it necessary to consider whether the provisions of Pub. Sts., c. 11, § 5, that the property of the Commonwealth shall be exempt from taxation, refer only to the annual general taxes assessed under the provisions of the chapter which contains the exemption, or whether it includes all special assessments levied upon real estate. The section exempts certain classes of property from taxation; among them are the property of the Commonwealth and that of certain charitable institutions. The case of *Boston Seamen's Friend Society v. Boston*, 116 Mass. 181, holds that the exemption of charitable institutions, in the section referred to, does not extend to special taxes for local improvements; and the reasoning of the opinion of Mr. Justice Devens would include all classes enumerated in the section, including the property of the Commonwealth. There is a strong ground for the contention, however, that the exemption of the property of the Commonwealth is based upon considerations not applicable to the exemption of public charitable institutions; and that it was the intention of the Legislature, upon grounds of public policy, to exempt such property in all cases.

Nor do I deem it necessary to determine whether the lands of the Commonwealth in South Boston have been appropriated to public uses, so as to bring them within the doctrine of the cases, which hold that property so appropriated is exempt from taxation. *Worcester v. Western Railroad*, 4 Met. 564.

It is sufficient for the purpose of the question proposed to say that other provisions of the statute under consideration make it clear that it was not the intention of the Legislature to subject the property of the Commonwealth to the assessment provided for in section 8, above quoted. Thus, section 9 of the chapter provides that a portion of such assessment with interest shall be included in the annual tax bills on the parcels in question for a period of ten successive years. This and other provisions, unnecessary to recite, show clearly that the property intended to be assessed is such property as is assessed for general taxation. It is not to be presumed that the drastic provisions for assessing and collecting the assessments should be applicable to the Commonwealth.

I am of opinion, therefore, that the land of the Commonwealth is exempt from the provisions of the statute in question.

Yours very truly,

HOSEA M. KNOWLTON, *Attorney-General.*

OPINIONS UPON APPLICATIONS FOR LEAVE TO FILE
INFORMATIONS IN THE NAME OF THE
ATTORNEY-GENERAL.

ATTORNEY-GENERAL *v.* EASTERN COLD STORAGE COMPANY.

Public nuisance. — Abatement. — Attorney-General. — Discretion.

The Attorney-General, in the exercise of the sound discretion intrusted to him, will not allow the use of his name in proceedings to abate a nuisance where the nuisance complained of is only technical, does not involve any serious danger to the rights of the public, and is sought for the purpose of enabling private parties to litigate their differences.

APRIL 15, 1898.

This is an application to the Attorney-General for the filing of a bill in equity against the Eastern Cold Storage Company, to restrain it from entering upon, opening and digging up certain streets in the city of Boston for the purpose of laying pipes therein. The information was asked for by the representatives of the Quincy Market Cold Storage Company, a corporation engaged in the same business as the Eastern Cold Storage Company.

Upon hearing the parties the following facts appeared. The Quincy Market Cold Storage Company, the representatives of which asked for the signing of the information, is a corporation organized under the laws of Massachusetts, and established for the purpose of furnishing refrigerating fluid for cold-storage purposes to shops and markets. Under a license from the aldermen of the city of Boston, granted some years ago, it laid pipes in a number of the streets in the market district of the city of Boston, and has since used the pipes for the purposes of its business. Some question having been made as to its right to maintain its pipes in the streets, an act of the Legislature was passed (St. 1898, c. 128) confirming and legalizing its doings.

The Eastern Cold Storage Company, on the 28th of December, 1897, obtained a license from the board of aldermen to lay and maintain underground conduits for the transportation of refrigerating fluid in certain streets in the city of Boston, some of them, at least, being streets already occupied by the Quincy Market Cold Storage Company. In the exercise of this license the Eastern Cold Storage Company, under the direction of the superin-

tendent of streets, caused certain streets to be opened and its pipes to be laid therein ; and it proposes to extend its pipes and business under the terms of the license granted to it by the board of aldermen.

The signing of the information by the Attorney-General is asked for on the ground that the acts of the defendant company constitute a public nuisance ; it being claimed that the board of aldermen had no authority, without the express sanction of the Legislature, to give to the defendant company a license to dig up the streets.

If the only question raised by the information were the jurisdiction of the aldermen to grant a license to the Eastern Cold Storage Company to dig up the streets for the purposes of their business, I should have no difficulty in reaching the conclusion that I ought to sign the information. Whether the officers of a municipality may authorize the laying of pipes below the surface of a public way, by private persons or corporations, for purposes not directly sanctioned by the Legislature, is at least a question of such doubt that I should not feel at liberty to pass upon it adversely, but should deem it my duty to bring it before the court for determination. I do not, however, find it necessary to consider this question, for I am of opinion, upon other grounds, that I should not sign the information.

There is no doubt of the authority of the Attorney-General to maintain an information in equity to restrain a corporation or an individual from the doing of acts which may create a public nuisance, or injuriously affect or endanger the public interests. *Attorney-General v. Jamaica Pond Aqueduct Corporation*, 133 Mass. 361. But this authority should only be exercised as to those public nuisances which affect or endanger the public safety or convenience, and require immediate interposition. *Attorney-General v. Tudor Ice Company*, 104 Mass. 239. The injury to public rights must be of a substantial character, and not a mere theoretical wrong. *Attorney-General v. Metropolitan Railroad*, 125 Mass. 515. When the nuisance complained of is an obstruction of a public way, and consists of acts which, even if unauthorized or illegal, will not create any serious or continued hindrance or obstruction to public travel therein, the discretion of the Attorney-General should not be exercised. *District Attorney v. Lynn & Boston Railroad Company*, 16 Gray, 242. He should not intervene unless there is danger of actual, serious and permanent obstruction to the rights of the public.

Practically, the only interest the public has in highways is that they be kept open and unobstructed for travel. If, for example,

it were proposed to erect a permanent structure, like a building, upon a public way, so as to interfere with the use of the streets by persons having occasion to travel thereon, it would be such a nuisance as the Attorney-General would be called upon to cause to be enjoined by proceedings in equity. It is otherwise with mere temporary disturbances of the surface, which are constantly occurring and which do not involve any permanent interference with public travel. Such matters may well be left to the control of the local authorities. It is to be presumed that those officers will perform their legal duty, and will not consent to or permit any act to be done which will seriously interrupt or interfere with persons having occasion to use the way in question. *District Attorney v. Lynn & Boston Railroad Company, ubi supra.*

Applying these distinctions, which are well settled, to the case presented, I am unable to discover any sound reason for the exercise of the discretion of the Attorney-General. The only possible interference with the rights of the public in their use of the streets is that occasioned by the digging up of the same for the purpose of laying pipes. Such an obstruction is temporary in its nature, and is one which is more properly within the control of the municipal body. It cannot be said to be a substantial and continued interference with public rights. The mere existence of pipes below the surface of the street, whether they are there lawfully or unlawfully, does not constitute an interference with the rights of the public to use the street, and is, therefore, not such a nuisance as calls for the action of the law officer of the Commonwealth.

The filing of an information like the one under consideration is a representation to the court by the Attorney-General, appearing in behalf of the public, that the rights of the public are so far interfered with as to require action by him for its protection. In practice such informations may be, and often are, conducted by counsel representing private interests; but this fact does not change the essential nature of the proceedings. The use of the name of the Attorney-General is not a mere fiction, employed to give private parties a standing, but is an assurance to the court that the law officer believes that there is a substantial interference with the rights of the public. His discretion, therefore, should only be exercised in favor of such an information when, upon the facts presented to him, he is satisfied that such actual nuisance exists.

This is plainly not the present case. A company which has, after many years of use of the streets, finally obtained legislative sanction for its acts, seeks by the use of the name of the Attorney-General to enjoin a rival company from a similar use. No

one has seen fit during these years to bring the matter to the attention of the law officer, and it is to be presumed that there has been no serious interference with public rights growing out of the acts of the petitioning corporation. I see no reason to suppose that any permanent danger to the public or any substantial interference with the use of the streets will result from the exercise of the license granted to the defendant corporation by the board of aldermen. The license itself appears to be carefully guarded, so as to cause only slight interruption to travel during the laying out of the pipes. Nothing appears tending to show that the privilege granted to the defendant company will be abused, or that any more serious interference with travel is liable to occur than is constantly arising from digging up the soil of the streets to lay pipes therein.

It is the duty of the Attorney-General to file informations for the abatement of nuisances which threaten the safety or convenience of the public. It is, on the other hand, no less his duty to exercise his discretion to withhold the use of his name in cases where the nuisance is only technical, does not involve any serious danger to the right of the public, and is sought for the purpose, in fact, of enabling private parties to litigate their differences. For these reasons I deem it my duty, in the exercise of the sound discretion entrusted to me, to refuse the use of my name to the information.

HOSEA M. KNOWLTON, *Attorney-General.*

GEORGE PUTNAM, *for the relator.*

JAMES A. BAILEY, Jr., *for the respondent.*

ATTORNEY-GENERAL *ex rel.* v. DANIEL F. MURPHY *et al.*

Quo warranto. — Local office. — Attorney-General.

The Attorney-General will not sign an information in the nature of *quo warranto* to try the title to an office which is local in its nature, when the petitioners have a clear remedy by mandamus.

JUNE 21, 1898.

This was an application to the Attorney-General for the filing of an information in the nature of *quo warranto* against the respondents, to try their title to the office of members of the Board of Health of Woburn.

There is nothing in this application which distinguishes it from the case of Attorney-General *ex rel.* v. Richard Bray (Attorney-General's report, 1897, p. 103). The office of member of the Board of Health is local in its nature, and the questions in issue

do not concern the citizens generally. The case does not present a question of the construction of any public statute,—it involves merely a consideration of the charter of the city of Woburn. St. 1897, c. 172. There is no good reason why the law officer of the Commonwealth should intervene to procure a construction of a city charter, upon a question local in its nature. The petitioners have a clear remedy by mandamus, and do not need the intervention of this office.

For the foregoing reasons I decline to sign the information.

HOSEA M. KNOWLTON, *Attorney-General.*

JOHN W. JOHNSON, *for the relator.*

FRANK P. CURRAN, *for the respondent.*

ATTORNEY-GENERAL *v.* NORFOLK WESTERN STREET RAILWAY COMPANY.

Quo warranto. — Rights of the public.

Where no substantial invasion of the rights of the public is threatened by a corporation, the Attorney-General will not grant the use of his name to an information in the nature of *quo warranto* against it which in his opinion does not state a case. If the rights of the public were seriously threatened, he might deem it his duty, there being no other remedy for the parties directly interested, to submit the question to the courts.

Nov. 6, 1898.

This was an application for the use of the name of the Attorney-General to an information in the nature of *quo warranto* against the Norfolk Western Street Railway Company. The information was applied for by persons owning estates abutting on the street through which it is proposed to locate the railway in question. No relators were named.

Upon hearing the parties the following facts appeared: The corporation was organized under the provisions of Pub. Sts., c. 113. Its articles of association described the railway as commencing "at a point on the westerly side of Washington Street near the junction of Washington and High streets in the town of Dedham and county of Norfolk, and to extend through the said Washington Street to School Street, thence through School Street to Court Street, thence through Court Street to Village Avenue, thence by Village Avenue to High Street, thence upon and through High Street to the town of Westwood in the said county." The remainder of the route described was through the towns of Westwood and Medfield to a point near the post-office in Medfield. After due publication of the articles of association, as required by Pub. Sts., c. 113, § 6, the directors

petitioned for a location in the town of Dedham, in the streets named in the articles of association. After notice and hearing, the location was refused.

Thereupon the directors petitioned for a location beginning at the same point, but proceeding directly through High Street instead of going from High Street through School Street, Court Street and Village Avenue to High Street by the route specified in the articles of association. The remainder of the location prayed for was the same as that described in the articles of association. This location through High Street was, after due notice and hearing, granted by the selectmen. Locations have also been duly obtained in the towns of Westwood and Medfield. After obtaining this location as aforesaid, and complying with the provisions of the statute, the Secretary of the Commonwealth issued to the corporation a certificate substantially in the form prescribed by Pub. Sts., c. 112, § 44. In this certificate the description of the road was the same as that set forth in the articles of association.

The petitioners allege that the selectmen of Dedham had no authority to grant the location in High Street, because the articles of association restricted the proposed railway to other streets; and that the construction of a street railway in High Street would be *ultra vires* for the same reason. The principal question, therefore, raised by the information is whether the description of a particular route in the articles of association limits the company to the route thus described.

The statute requires that the articles of association shall state the termini of the proposed road, and the length as near as may be. But the particular route by which the termini are to be connected is a matter for subsequent consideration by the selectmen. It is expressly provided in section 6 that the directors shall cause the articles of association to be published once a week for three weeks before proceeding to fix the route of the road. The route, therefore, cannot be fixed in the articles of association; and the enumeration of particular streets in them is surplusage, unless rights of others are thereby affected.

It is claimed, however, that the enumeration of specific streets in the articles of association cannot properly be treated as surplusage, because, by the publication of the articles containing the enumeration, the public, and particularly abutters, are misled. This contention, in my opinion, rests upon a misconception of the object of requiring publication of the articles of association. It is not for the purpose of giving notice to abutters. That is expressly provided for later, when the location is sought for. The publication of the articles of association is to advertise the fact

that the formation of a street railway corporation is proposed, with the names of the incorporators, and the amount of their interest in it, to the end that the public and persons liable to be affected may judge of the good faith, character and financial standing of the promoters of the enterprise.

The public cannot be misled by the designation of route in the articles of association, for its rights are fully protected by the jurisdiction delegated to the municipal body to pass upon the question of location. The rights of abutters, also, are amply secured by the statutes. No location can be granted until a petition has been filed with the municipal board, setting forth the streets upon which it is sought to locate tracks, and until due notice has been given of such petition, and opportunity given to abutters to object and to be heard upon their objection.

In this case the articles of association fully complied with the provisions of the statutes in stating the termini and the probable length of the proposed road. Further and more specific designation of the streets connecting the termini was unnecessary, had no business in the articles, and could not affect the rights of the public or of individuals. They are, therefore, of no effect, and may properly be regarded as surplausage.

The certificate of incorporation issued by the Secretary of the Commonwealth recited the description of the route as set forth in the articles of association. This was required by Pub. Sts., c. 112, § 44. It is contended, however, that this enumeration in the certificate amounts to a limitation in the charter of the corporation, confining it to the streets named. But the certificate of the Secretary is not its charter. The charter of a corporation formed under the general law is not the certificate of the Secretary of the Commonwealth, but "consists of the statute or statutes under which it is formed, and which define its powers, together with the instruments required by such statute or statutes to be executed and filed by the corporation." 7 Am. & Eng. Encyl. of Law (2d ed.), p. 646. *People v. Chicago Gas Trust Co.*, 130 Illinois, 268, 286. *Granger's, etc., Ins. Co. v. Kamper*, 73 Ala. 325, 341. The certificate of the Secretary of State is merely evidence that the incorporators have complied with the provisions of the general law, and are entitled to become and be a corporation. They derive their power and authority from, and are subject only to, the limitations of the statutes under which they are formed. The certificate of the Secretary cannot diminish or enlarge those rights.

I am clearly of the opinion, therefore, that the petitioners are not entitled to a writ of *quo warranto*. If great danger to the

public were threatened, I might deem it my duty, however, in view of the suggestion that there is no other remedy, to sign the information. But no such danger exists. The Legislature has delegated the protection of the interests of the public to the municipal board. That board in this case has determined that public convenience and necessity require the location in question, and its determination must be accepted as conclusive.

No substantial invasion of public rights being threatened, I am of opinion that the Attorney-General is not called upon to grant the use of his name, particularly to an information which in his opinion does not state a case.

The application, therefore, is refused.

H. M. KNOWLTON, *Attorney-General.*

STOREY & THORNDIKE, *for the relator.*

GEORGE S. FORBUSH & JOSEPH J. FEELEY, *for the respondent.*

MEMORANDUM.

In re MASSACHUSETTS PIPE LINE GAS COMPANY.

Massachusetts Pipe Line Gas Company.—Capital stock.—Unauthorized issue.—Gas and Electric Light Commissioners.—Approval.

Before St. 1894, c. 450, was enacted, a gas company subject to general laws could not commence business till the whole amount of its capital stock, as fixed by the incorporators, had been paid in. That statute requires all gas companies to obtain the approval of the Gas and Electric Light Commissioners before issuing either original or increase issues of stock; so that now only so much of the capital stock of a gas company as the corporation is authorized by the Gas and Electric Light Commissioners to issue is required to be paid in.

The Massachusetts Pipe Line Gas Company, incorporated by St. 1896, c. 537, was made subject to general laws, and the amount of its capital stock fixed thereby at one million dollars; but it is subject to St. 1894, c. 450, relative to the issuing of its stock, and must obtain the approval of the Gas and Electric Light Commissioners before its issue of the whole amount thereof will be legal.

MARCH 1, 1898.

The Board of Gas and Electric Light Commissioners, having determined that the Massachusetts Pipe Line Gas Company has violated the provisions of St. 1894, c. 450, by issuing capital stock without the authority of the Board, has referred the matter to the Attorney-General, under the provisions of St. 1885, c. 314, § 12: This section provides that the Attorney-General shall "take such proceedings thereon as he may deem expedient." I interpret this section as authorizing, if not requiring, the Attorney-General to determine whether, upon the facts stated by the Board, there has been a violation of law by the corporation reported. Acting, therefore upon this interpretation, I have duly considered the question presented and have heard counsel thereon.

I understand the facts to be as follows: The Massachusetts Pipe Line Gas Company, incorporated by St. 1896, c. 537, having voted at its first meeting to fix the capital of the corporation at one million dollars, has issued the whole amount of such capital stock without having previously obtained the authority of the Board. It is claimed by the Board that in so doing it has violated the provisions of St. 1894, c. 450, entitled "An Act relative to the issue of stocks and bonds by gas and electric light companies."

The charter of the company, in the first section, provides that the corporation shall be "subject to all the duties, restrictions and liabilities, and all general laws which now are or may hereafter be in force applicable to gas companies, except as hereinafter expressly provided."

There can be no question that the Massachusetts Pipe Line Gas Company is a gas company. Its charter authorizes the formation of the corporation "for the purpose of manufacturing, buying, selling, dealing in, conveying, transporting and distributing gas for illuminating, heating, cooking, chemical, mechanical and power purposes." It was claimed at the hearing before me that this corporation is to be distinguished from ordinary gas companies, because it proposes to deal in coke; and that the latter is the principal purpose for which the corporation was formed. However that may be in fact, no such distinction appears in the act of incorporation. It is impossible in the charter of the company to establish any difference between this and what in the statutes are specifically entitled "gas companies."

It is necessary to determine, first, what general laws were and are in force applicable to gas companies; and, second, whether this company is expressly exempted from any of such general laws.

Pub. Sts., c. 106, § 11, authorizes ten or more persons to associate themselves by an agreement in writing, with a capital not less than five thousand nor more than five hundred thousand dollars, for the forming of a gas company. The same chapter further provides in section 16 that the agreement for such organization shall set forth the fact that the subscribers thereto "associate themselves together with the intention of forming a corporation, the corporate name assumed, the purpose for which it is formed, the town or city . . . in which it is established or located, the amount of its capital stock, and the par value and number of its shares." Sections 47 and 48 require the capital stock to be paid in, either in cash or by a conveyance of property, at a valuation approved by the Commissioner of Corporations. By section 46 it is provided that no corporation organized under chapter 106 shall "commence the transaction of the business for which it was organized or chartered until the whole amount of its capital stock has been paid in." Sections 34 and 39, as amended by St. 1894, c. 472, provided that, in case of increase of capital stock of a gas company, the new shares shall be disposed of at their actual value for the benefit of the corporation. All the foregoing provisions are applicable to gas companies formed under general laws.

In 1894 the Legislature enacted what are commonly called the anti-stock-watering acts ; chapter 450 relating to gas companies, 452 to telegraph and telephone companies and 462 to steam and street railway companies. These three acts are similar in their provisions. They were intended to effect a radical change in the incorporation and conduct of the business of public-service corporations. Their obvious purpose was to prevent the issuing of stock or bonds not reasonably necessary for the prosecution of the business for which such corporations were organized ; to the end that the public should not be required to contribute to the payment of dividends upon the stock or bonds, the proceeds of which were not reasonably necessary for the business of the corporation. The first section of the act relating to gas companies provides that " Gas companies and electric light companies, whether such companies are organized under general laws or under special charters, and however authorized to issue capital stock and bonds, shall hereafter issue only such amounts of stocks and bonds, as may from time to time, upon investigation by the Board of Gas and Electric Light Commissioners, be deemed and be voted by them to be reasonably requisite for the purposes for which such issue of stock or bonds has been authorized."

There is but little doubt that the provisions of the section just quoted were intended by the Legislature to apply and do apply, not only to increase of capital stock but to original issues of stock authorized upon the forming of the corporation. No distinction between original and increased stock is hinted at in the section, and the reasons which would apply to increase of capital stock are no less applicable to stock first issued. This being so, we are met with the fact that there is an inconsistency between the statute last quoted and the provisions of the general corporation law above set forth. Those required the capital stock to be fixed and limited by the articles of association, and that the corporation should not commence the transaction of business until the whole amount of capital stock so fixed should be paid in. If Pub. Sts., c. 106, § 46, is still applicable to gas companies, notwithstanding St. 1894, c. 450, it is obvious that in case the Gas Commissioners should decline to authorize the issue of the whole amount of capital stock fixed by the corporation, the company would not be authorized to commence business, the whole of the capital stock fixed by the corporation not having been paid in.

There is no express repeal of the provisions of section 46 in the statute of 1894 ; but at the end of the first section of the latter statute it is provided that " Nothing contained in this act shall be construed as impairing any existing requirements of law in relation

to the issue of capital stock or bonds by such companies, provided such requirements are not inconsistent herewith." This by implication is a repeal or modification of such provisions of existing laws as are inconsistent herewith. I am of opinion that the provisions of the general law, requiring the paying of the entire capital stock, must be taken to be modified so as to require only the payment of such of the capital stock as the corporation has been authorized by the Board to issue.

But it is not necessary to hold that the statute of 1894 repeals that part of the existing law which provides for the fixing of the capital stock by the incorporators in forming the corporation under its provisions. The statute of 1894 has nothing to do with the fixing of the capital stock,—it relates only to the issue thereof. There is a plain distinction between fixing the capital stock of a corporation and the issuing of shares. In some States it is not necessary that the whole of the capital stock be issued; and it is notorious that many corporations are formed under the laws of such States for the reason, among other things, that they are not obliged under their charters to issue the whole amount of stock fixed thereby. Section 46 of the general corporation law, forbidding corporations to transact business until the whole amount of their capital stock is paid in, was first enacted by St. 1870, c. 224, § 32. Prior to that time there was no prohibition against a corporation carrying on business without the payment of its capital stock. Gen. Sts., c. 60, § 17, provided that the members of every company should be jointly and severally liable for the debts and contracts of the company "until the whole amount of the capital stock fixed and limited by the company" was paid in. But this did not make it unlawful for the company to carry on business before its stock was paid in, in whole or in part. The fixing of the capital stock by a charter, by articles of association or by vote of the corporation is merely the establishment of a limit. It does not at common law make it necessary to the existence of the corporation that shares shall be issued to the full amount of the capital fixed; nor did it under the statutes until St. 1870, c. 224, now chapter 46 of the general corporation law, was passed.

If this distinction between the fixing of the capital stock and the issuing of the shares thereof be kept in mind, there is no difficulty in reconciling the apparent inconsistency between the anti-stock-watering acts and the general corporation laws. It is still necessary, since the passage of St. 1894, that those associating themselves to form a gas corporation shall fix the amount of their capital stock by their articles, which amount shall only be increased in the manner provided under the law, by vote of the

corporation. Unlike other private corporations, however, it is necessary, under the provisions of St. 1894, that before issuing any shares of the capital stock so fixed, the corporation shall go before the Board with a statement of the purposes for which it is desired that stock should be issued. After hearing the corporation, the Board is authorized to determine what proportion of shares of the capital stock shall be issued for the purposes of the corporation as stated in its petition. The amount decreed by the Board is thereupon the actual authorized capital, and the provisions of section 46 are therefore modified so far as to require only the payment of the proportion of the whole of the capital stock which the Board has authorized the corporation to issue. It cannot be said that the public or creditors of the corporation are misled, for the provisions of law are presumed to be known to all persons, the proceedings of the Board are public; and the number of shares authorized to be issued, and which, therefore, stand for the capital stock of the company, are known or can be ascertained by any person interested.

It follows, therefore, that, unless subsequent sections of the charter of the Massachusetts Pipe Line Gas Company have expressly modified the provisions of the general law, it is subject to the provisions above set forth, and is authorized to issue only the number of shares that after hearing the Board from time to time authorize as necessary for the purposes of the corporation; and that, if the value of the shares so authorized to be issued is paid in the manner prescribed by general laws, the corporation has complied with the provisions of chapter 106, § 46, and is authorized to do business without personal liability of directors or stockholders on that account.

It is claimed, however, that the company has been expressly exempted by its charter from the provisions of law above referred to. It is plain that such an intent on the part of the Legislature must be clearly indicated. The statutes of 1894, relating to public service corporations, were remedial in their nature, and for the benefit of the public. The Massachusetts Pipe Line Gas Company is a gas company, and all the reasons which led to the enactment of that statute are applicable to the corporation in question. They must be held to operate upon it, unless the contrary intention is rendered necessary by the express terms of its charter.

Section 3 of the charter provides that the capital stock of the corporation shall be "one million dollars, divided into ten thousand shares at the par value of one hundred dollars each." In the light of the interpretation that I have heretofore given to the

various general statutes applicable to gas companies, it cannot be said that this sentence, considered by itself, is, either expressly or by implication, an exemption of the corporation from the provisions of St. 1894. It has no greater significance than the fixing of the capital of a gas corporation organized under the general law, which provides that the articles of association shall state the amount of the capital stock. That provision is not, as has been suggested, to be regarded merely as opportunity for the associates to express their opinion in relation to the amount of capital needed, subject to the revision of their judgment by the Board. It means more. It is a direct command to the incorporators to fix the capital stock of the corporation they are proposing to form. That having been done, the amount of the capital stock is absolutely fixed and limited, and is not made subject to the revision of the Board of Gas and Electric Light Commissioners. Their jurisdiction under St. 1894 is in terms limited to a supervision over the *issuing* of the shares. They do not fix the capital at a different amount from that fixed by the articles of incorporation; they only regulate the amount to be issued.

The same considerations apply to that provision of the charter in question which fixes the capital of the corporation at one million dollars. There would be no occasion for such a provision, but for the fact that the amount fixed is greater than that permitted by the general law. In this respect the provisions of those laws are to be taken as having been expressly modified. The modification, however, is only as to the amount at which the capital stock may be fixed. The issuance of the stock is still subject to the salutary provisions imposed upon all gas companies, and which it was the clear intent of the Legislature of 1894 to impose upon all gas companies, however formed and whatever their capital.

Under the charter of the Massachusetts Pipe Line Gas Company, therefore, its capital stock is fixed or must be fixed by the corporation at one million dollars. Only such portion of this capital, however, may be from time to time issued as the Board may reasonably determine to be necessary for the purposes of the corporation, as set forth in its petitions to the Board.

In view of this conclusion, it becomes unnecessary to consider whether the word "shall," which fixes the capital stock in the charter, is to be considered as imperative or to be equivalent to "may," a question which was discussed exhaustively at the hearing. Whether the corporation may fix its capital stock at a less amount than one million dollars (which is, at least, doubtful) is not of importance. The question submitted to me concerns only

the issuing of shares of stock under the provisions of St. 1894. It appears that the corporation has fixed its stock at the sum named in the charter, and no question thereupon arises.

I am unable to appreciate the force of the argument, strenuously pressed before me, that the language of section 3, by which it is provided that the capital of the corporation shall be one million dollars, is to be regarded as a requirement that the corporation should actually pay in that amount of money before commencing business. The range of business permitted to the corporation under its charter is extraordinarily large. It may, on the one hand, content itself with the establishment of a single pipe line, connecting two towns or companies, an enterprise which would require far less capital than the amount fixed by the charter; or, on the other hand, it may lease many companies, and carry on a business for which the sum of one million dollars would be entirely inadequate. It would be unreasonable to suppose that the Legislature intended the corporation to have a capital of one million dollars if the business actually engaged in did not require one-tenth of that amount.

It is contended, in view of the magnitude of the enterprise authorized by the charter, that the Legislature deemed it necessary to require as a guaranty of good faith the payment of a capital of a million dollars. If there were any duty upon the company to go into any business which required a capital of a million dollars, there might be some force in this argument; but there is no such requirement. In view of the fact that the company has entire freedom of action as to the extent of the business which it may do under its charter, it is reasonable to suppose that the Legislature intended, as indeed was expressly provided in section 1, that the corporation should be subject to the provisions applicable to other gas companies, which substantially make it the duty of the Board to keep the stock and bonds at a parity with the business of the corporation, and neither above nor below it.

So far I have considered only the first sentence of section 3 of the company's charter. It is strenuously claimed, however, that the succeeding sentence of the section is to be taken as changing the construction, which, as I have shown, would otherwise be put upon the first sentence. The sentence in question is as follows: "The company may from time to time, but in compliance with the provisions and requirements of the general laws of the Commonwealth applicable to the issue of capital stock, increase its capital stock to an amount not exceeding five million dollars." The contention of the company is that, in view of the express provision in this sentence, expressly requiring that an increase of capital stock

must be in accordance with the provisions of general laws, the Legislature must have intended by implication that the fixing of the original capital stock should not be in accordance with the general laws relating to such capital stock.

But it is provided in section 1 that the provisions of the general laws shall be applicable to this corporation, "unless otherwise *expressly* provided." In view of the remedial and salutary character of the legislation of 1894, it would certainly be strange if the Legislature, after having provided that this corporation should be subject to such laws and all other general laws upon the subject, except where it should expressly provide otherwise, should indicate its intention of relieving this corporation therefrom by implication only. The words "otherwise expressly provided" are not to be lightly regarded. Intent to exempt the company is not to be inferred; it must distinctly, if not expressly, appear. To read into that part of the statute fixing the capital stock an intention to repeal the existing provisions of law applicable thereto, by inference from language found in a succeeding and independent sentence, is very far from the "express" provision contemplated by the first section.

It cannot be denied that, under the interpretation which I have given to section 3, it contains superfluous and redundant language. I do not quite agree, however, as contended by counsel, that the whole purpose of the Legislature could have been expressed by using the expression "the capital stock shall not exceed five million dollars." Such a contention loses sight of the clear distinction made in the Public Statutes between original and increased stock. It has been the custom, in both general laws and in special charters, to fix the amount of the original stock and the limit of permissible increase; but in the case of gas companies there is a still more marked distinction between original and increased stock. The original shares are distributed to and paid for by the incorporators. Increased stock under the Public Statutes must be sold at public auction, and under St. 1894, c. 472, must be offered to the stockholders at a value to be fixed by the Board of Gas and Electric Light Commissioners, and not necessarily at par.

This distinction between original stock and increased stock of gas companies sufficiently explains the express requirement in the charter of the company in question that its stock shall only be increased under the provisions of the general law. Having fixed the original capital at one million dollars and the limit of increase at five million dollars, and having made the corporation subject to all the provisions of general law applicable to gas companies, the Legislature did not, as contended, merely fix the capital at not

exceeding five million dollars, and use redundant words therefor. It fixed the original capital at a limit of one million dollars, to be issued from time to time as authorized by the Gas Commissioners, to be subscribed and paid for at par by the incorporators. After the limit of the original capital should be reached, increased capital could only be issued after authority obtained from the Gas Commission in the manner provided for the increase of capital stock of gas companies formed under the general laws, — to wit, at the actual market value thereof, not less than par.

It is true that, even under this interpretation, the clause “but in compliance with the requirements and provisions of the general laws of the Commonwealth,” etc., are redundant, for the reason that under section 1 the corporation had already been made subject to all the provisions of the general laws, unless otherwise expressly provided in the act. In view of the fact, however, that the provisions relating to original stock and increased stock are radically different, the redundant clause, in my opinion, is to be taken not as creating by implication an exemption in respect to its original stock from the anti-stock-watering acts, but rather as inserted *ex majore cautela*; having in view the importance of providing for the issuing of increased stock at the true value thereof, under the law applicable to all public-service corporations.

HOSEA M. KNOWLTON, *Attorney-General.*

RICHARD OLNEY, L. S. DABNEY and W. M. BUTLER, *for the Massachusetts Pipe Line Gas Company.*

HOMER ALBERS, *for certain consumers of gas.*

WM. B. FRENCH, *for certain consumers of gas.*

W. E. L. DILLAWAY, *for holders of first and second series of Boston united gas bonds.*

INFORMATIONS.

1. AT THE RELATION OF THE TREASURER AND RECEIVER-GENERAL.

(a) For the non-payment of corporation taxes for the year 1897, informations were brought against the —

A. W. Warren Company. Enjoined.

Arthur C. King Company. Enjoined.

Bates Machine Company. Petitioned into bankruptcy. Pending.

Bay State Chair Company, Incorporated. Tax paid and information dismissed.

Bay State Metal Works. Tax paid and information dismissed.

Berlin Falls Fibre Company. Previously enjoined.

Blanchard Machine Company. Tax paid and information dismissed.

Boston Credit Company. Enjoined.

Boston Traveller Company. Tax paid and information dismissed.

Bracketts Market Corporation. Tax paid and information dismissed.

Cambridge Co-operative Society. Tax paid and information dismissed.

Cambridge Scandinavian Co-operative Society. Enjoined.

Cape Ann Granite Railroad Company. Tax paid and information dismissed.

Central Plating Works. Enjoined.

Charles A. Millen Company. Tax paid and information dismissed.

Childs & Kent Express Company. Tax paid and information dismissed.

Church Cleansing Company. Enjoined on tax return suit.

Climax Bell Company. Enjoined.

Coates Clipper Manufacturing Company. Tax paid and information dismissed.

Coburn Stationery Company. Tax paid and information dismissed.

Damon Safe and Iron Works Company. Tax paid and information dismissed.

Evening Gazette Company. Tax paid and information dismissed.

Foxboro Foundry and Machine Company. Tax paid and information dismissed.

Franklin Educational Company. Tax paid and information dismissed.

George P. Staples & Co., Incorporated. Tax paid and information dismissed.

George W. Prouty Company. Enjoined.

H. B. Stevens Company. Tax paid and information dismissed.

N. M. Kinports Company. Enjoined.

Harcourt Paper Box Company. Tax paid and information dismissed.

Highland Foundry Company. Tax paid and information dismissed.

Horace Partridge Company. Tax paid and information dismissed.

Howe Lumber Company. Tax paid and information dismissed.

Johnson Manufacturing Company. Tax paid and information dismissed.

Joseph Wolfson Company. Enjoined.

Kimball Brothers Company. Tax paid and information dismissed.

Lamprey Boiler Furnace Mouth Protector Company. Tax paid and information dismissed.

Loudy Shoe Company. Unable to get service.

Malden Stock Laundry Company. Tax paid and information dismissed.

Medway Water Company. Tax paid and information dismissed.

Model Manufacturing Company. Tax paid and information dismissed.

N. C. Boutelle Furniture Company. Tax paid and information dismissed.

Union Telephone and Telegraph Company of Massachusetts. Pending.

Pittsfield Lumber Company. Enjoined.

Pranker Manufacturing Company. Enjoined.

Shady Hill Nursery Company. Tax paid and information dismissed.

Springfield Elevator and Pump Company. Tax paid and information dismissed.

Standard Grip Testing Machine Company of New England. Previously enjoined.

Sumner Drug and Chemical Company. Tax paid and information dismissed.

Sutherland Drug and Medicine Company. Enjoined.

Thompson & Odell Company. Tax paid and information dismissed.

Tremont Publishing Company. Pending.

Turner's Falls Lumber Company. Tax paid and information dismissed.

Union Stamp Co-operative Society. Enjoined.

Wade & Reed Company. Tax paid and information dismissed.

Walnut Publishing Company. Tax paid and information dismissed.

Weymouth Seam Face Granite Company. Tax paid and information dismissed.

William Charak Company. Enjoined on tax return suit.

William H. King Sons Company. Tax paid and information dismissed.

Worcester Marble and Granite Company. Enjoined.

Worcester Reed Chair Company. Enjoined on tax return suit.

(b) For failure to file the tax return for the year 1898, required by section 38 of chapter 13 of the Public Statutes, informations were brought against the—

A. H. Atwood Company. Enjoined.

Amesbury Opera House Company. Return filed and information dismissed.

Atlantic Novelty Manufacturing Company. Return filed and information dismissed.

Austin Amusement Company. Enjoined.

Barbour Stockwell Company. Return filed and information dismissed.

Bates Machine Company. Return filed and information dismissed.

Bay State Chair Company, Incorporated. Return filed and information dismissed.

Belchertown Water Company. Enjoined.

Biddle & Smart Company. Return filed and information dismissed.

Cambridge Scandinavian Co-operative Society. Enjoined on tax suit.

Capital and Progress Spring Company. Enjoined.

Charles Atkinson Company. Enjoined.

Church Cleansing Company. Enjoined.

Clinton Printing Company. Enjoined.

Columbia Stoker Company. Return filed and information dismissed.

Damon Safe and Iron Works Company. Return filed and information dismissed.

Framingham Rattan Company. Return filed and information dismissed.

Franklin Educational Company. Return filed and information dismissed.

Gallagher Express Company. Return filed and information dismissed.

Gilman Snow Guard Company. Return filed and information dismissed.

Gloucester Co-operative Association. Return filed and information dismissed.

H. M. Kinports Company. Return filed and information dismissed.

Hardy Company. Return filed and information dismissed.

Hunt Spiller Manufacturing Company. Pending.

J. Seligman Company. Enjoined.

John F. Fowkes Manufacturing Company. Enjoined.

Joseph Wolfson Company. Enjoined on tax suit.

Kaiser Hat and Cap Company. Enjoined.

Lamprey Boiler Furnace Mouth Protector Company. Return filed and information dismissed.

Lithuanian Co-operative Tailoring Association. Unable to get service.

Loudy Shoe Company. Unable to get service.

Massachusetts Enameled Brick and Tile Company. Return filed and information dismissed.

Massachusetts Real Estate Company. Return filed and information dismissed.

Meadow Company. Return filed and information dismissed.

Model Manufacturing Company. Return filed and information dismissed.

Murray Brothers Company. Return filed and information dismissed.

N. C. Boutelle Furniture Company. Enjoined.

National Plaster Company. Return filed and information dismissed.

New England Construction Company. Enjoined.

Orange & Erving Street Railway Company. Return filed and information dismissed.

Orange Furniture Company. Return filed and information dismissed.

Park Carriage and Bicycle Company. Enjoined.

Paul Askenasy Company. Enjoined.

Pittsfield Lumber Company. Return filed and information dismissed.

Royal Millinery Company. Return filed and information dismissed.

Springfield City Market Company. Return filed and information dismissed.

South Deerfield Water Company. Return filed and information dismissed.

Standard Crockery and House Furnishing Company. Return filed and information dismissed.

Standard Furniture Company. Return filed and information dismissed.

Sutherland Drug and Medicine Company. Return filed and information dismissed.

Turner's Falls Lumber Company. Return filed and information dismissed.

W. C. Young Manufacturing Company. Return filed and information dismissed.

William Charak Company. Enjoined.

William H. King Sons Company. Return filed and information dismissed.

Worcester Reed Chair Company. Enjoined.

2. AT THE RELATION OF THE COMMISSIONER OF CORPORATIONS.

(a) For failure to file the certificate of condition required by section 54 of chapter 106 of the Public Statutes —

George W. Prouty Company. Certificate filed. Information dismissed.

Hyde Park Co-operative Association. Certificate filed. Information dismissed.

Old Colony Boot and Shoe Company. Certificate filed. Information dismissed.

R. H. Long Shoe Manufacturing Company. Certificate filed. Information dismissed.

Brophy Brothers Shoe Company. Certificate filed. Information dismissed.

(b) For failure to file statement required by St. 1891, c. 341, and St. 1894, c. 541 —

Financial Information Company. Statement filed. Information dismissed.

Boston Fire Despatch. Statement filed. Information dismissed.

3. AT THE RELATION OF PRIVATE PERSONS.

Attorney-General *ex rel. v.* Vineyard Grove Company. Petition for use of name in an information for an injunction restraining the said company from an alleged interference with the rights of the public in a sea beach, and ordering the removal of structures causing such alleged interference. Hearing. Use of name granted. Henry S. Dewey appointed master. Pending.

Attorney-General *ex rel.* Samuel E. Hull *et als.*, Selectmen of Millbury, *v.* Washburn & Moen Manufacturing Company. Information in the nature of *quo warranto* to abate a nuisance. Hearing, and use of name granted. Pending.

Attorney-General *ex rel.* Andrew J. Bartholomew *et als.*, members of the school committee of Southbridge, *v.* John T. Clark, superintendent of schools. Information in the nature of *quo warranto* to try respondent's title to office of superintendent of schools. Hearing, and use of name granted. Dismissed.

Attorney-General *ex rel.* George S. Winslow *et als.* *v.* New England Railroad Company. Information to compel the respondent to obey the order of the Railroad Commissioners, requiring it to abandon the two stations in Norwood and erect a new one. Hearing, and use of name granted. Pending.

Attorney-General *ex rel.* Otis Freeman, Jr., *v.* John F. Colquhoun. Petition to the supreme judicial court for use of name in an information in the nature of *quo warranto* to try defendant's title to the office of superintendent of the poor farm in Lawrence. Hearing, and use of name granted. Dismissed.

Attorney-General *v.* Medway Water Company. Petition to the supreme judicial court for use of name in an information to forfeit the defendant's charter for non-user and violation of statute. Hearing, and use of name granted. Pending.

Attorney-General *ex rel.* James C. Martin *v.* Arthur MacCabe. Information in the nature of *quo warranto* against the respondent for usurpation of the office of city physician of Gloucester. Hearing. Use of name granted. Reported to full court. Dismissed Jan. 9, 1898.

Attorney-General *v.* Henry Bigelow Williams *et als.* Petition for a writ of injunction to restrain the defendants from erecting certain buildings above a certain height in Copley Square, Boston. Hearing. Use of name granted. Pending.

Attorney-General *ex rel.* Frank H. Briggs *v.* Board of Aldermen of the city of Boston. Petition to the supreme judicial court for peremptory mandamus commanding the board of aldermen to call a meeting of the voters of the 11th Suffolk District for the election of a representative to the General Court from said district. Hearing, and use of name granted. Petition dismissed without prejudice and without costs.

APPLICATIONS REFUSED AND OTHERWISE DISPOSED OF.

[For full text of opinions, giving reasons for refusal, see page 85.]

Attorney-General *v.* Eastern Cold Storage Company. An information in equity to enjoin said company from entering the streets of Boston and exercising their franchise therein. Hearing. Use of name denied.

Attorney-General *v.* Daniel F. Murphy *et al.* An information in the nature of *quo warranto* to try title of respondents to the office of board of health of Woburn. Hearing. Use of name denied.

Attorney-General *v.* Norfolk Western Street Railway Company. Information in the nature of *quo warranto* to restrain the company from using certain streets in the town of Dedham. Hearing. Use of name denied.

Attorney-General *ex rel. v.* Henry Bigelow Williams *et als.* Information in equity to abate a public nuisance. Hearing. Information withdrawn.

Attorney-General *ex officio v.* City of Boston *et als.* Petition for an injunction to restrain the defendants from carrying on work under their contract. Hearing. Petition withdrawn.

Attorney-General *ex officio v.* City of Boston *et als.* Petition for leave to file an information in the nature of *quo warranto* to nullify contract entered into between the city of Boston and one of the defendants to erect a garbage crematory on Calf Pasture. Hearing. Petition withdrawn.

PENDING IN OFFICE.

Attorney-General *v.* Onset Bay Grove Association. Information in the nature of *quo warranto* to abate a public nuisance.

GRADE CROSSINGS.

Notices have been served upon this department of the filing of the following petitions for the appointment of special commissioners, under St. 1890, c. 428, relating to the abolition of grade crossings:—

Barnstable County.

Bourne. Selectmen of Bourne, petitioners. Commissioners appointed. Pending.

Harwich. New York, New Haven & Hartford Railroad Company, petitioner. Pending.

Harwich. Selectmen of Harwich, petitioners. Pending.

Berkshire County.

Richmond, Town of, and West Stockbridge, Town of, joint petitioners. Crossings over Boston & Albany Railroad. Pending.

Williamstown, Town of, petitioner. Crossings over Fitchburg Railroad. Commissioners appointed. Pending.

West Stockbridge. Directors of the Boston & Albany Railroad, petitioners. Commissioners appointed. Pending.

West Stockbridge. New York, New Haven & Hartford Railroad Company, Directors of, petitioners. Petition for the abolition of grade crossings over the West Stockbridge Railroad Corporation in West Stockbridge. Pending.

West Stockbridge. New York, New Haven & Hartford Railroad Company, Directors of, petitioners. Petition for the abolition of "Potters Crossing," alias "Tymesons Crossing," in West Stockbridge. Pending.

Bristol County.

Attleborough. Directors of Old Colony Railroad Company, petitioners. Commissioners appointed. Pending.

New Bedford, Mayor and Aldermen of city of, petitioners. Old Colony Railroad and New York, New Haven & Hartford Railroad. Pending.

Taunton, Mayor and Aldermen of city of, petitioners. Old Colony Railroad. Pending.

Fall River, Mayor and Aldermen of city of, petitioners. Two petitions consolidated. New York, New Haven & Hartford Railroad Company. Pending.

Somerset. New York, New Haven & Hartford Railroad, petitioner. Pending.

Dighton. New York, New Haven & Hartford Railroad, petitioner. Pending.

Easton. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Taunton, Mayor and Aldermen of, petitioners. Petition for the abolition of grade crossings across Dean, Winter, West, Britania and Freemont streets and Crane Avenue in Taunton. Pending.

Essex County.

Swampscott, Selectmen of, petitioners. Commissioners appointed. Hearing. Report partially confirmed. Pending.

Manchester. Directors of the Boston & Maine Railroad Company, petitioners. Pending.

Beverly. Directors of the Boston & Maine Railroad, petitioners. Pending.

Ipswich. Boston & Maine Railroad Company, petitioners. Pending.

Franklin County.

Montague. Selectmen of the town of Montague, petitioners. Central Vermont Railroad Company and Fitchburg Railroad Company. Pending.

Northfield, Selectmen of, petitioners. Petition for the abolition of a grade crossing over the Connecticut River Railroad and Central Vermont Railroad at River Street. Pending.

Hampden County.

Chicopee, Mayor and Aldermen of, petitioners. Crossings over Connecticut River Railroad. Commissioners appointed. Pending.

Monson. Boston & Albany Railroad, petitioner. Hastings', Butler's, Moran's and Silver Street crossings. Hearing. Decree as to first and the last two crossings. Disagreement as to second. Recommitted. Pending.

West Springfield, Selectmen of, petitioners. Baldwin and Cold Spring streets. Hearings. Report of commissioners filed. Pending.

Palmer, Selectmen of, petitioners. Pending.

Springfield, Mayor and Aldermen of, petitioners, Bay Street, Boston Road, Wilbraham Road, Alden and Hickory streets, crossing the New York & New England Railroad. Commissioners appointed. Pending.

Springfield, Pasco Road. Directors of the Boston & Albany Railroad Company, petitioners. Pending.

Springfield, Pasco Road. Mayor and Aldermen of Springfield, petitioners. Pending.

Westfield. Selectmen of the town of Westfield, petitioners. Pending.

Springfield, Armory Street. Mayor and Aldermen of Springfield, petitioners. Pending.

East Longmeadow. Selectmen of East Longmeadow, petitioners. Pending.

Chicopee, Mayor and Aldermen of, petitioners. Petition for the abolition of grade crossings over the Connecticut River Railroad. Pending.

Palmer. Boston & Albany Railroad Company, petitioners. Cooley's crossing. Pending.

Westfield. Selectmen of the town of Westfield, North Elm Street. Pending.

(North) Wilbraham. Depot. Boston & Albany Railroad Company, petitioners. Pending.

Palmer. Blanchard's, Tenney's and Breckenridge's crossings. Boston & Albany Railroad Company, petitioners. Pending.

Hampshire County.

Belchertown, Town of, petitioner. Crossings over Central Massachusetts and New London Northern Railroad. Commissioners appointed. Final report of auditor filed. Pending.

Northampton, Mayor and Aldermen of, petitioners. King, North, Main, Holyoke, Pleasant (2 crossings) and South streets. Hearings. Report of commissioners filed. Decree confirming commissioners' report as to King, Edwards, Main and Upper and Lower Pleasant streets, but rejecting it as to Holyoke Street. Pending before full court on report.

Ware, Selectmen of, petitioners. Commissioners appointed. Pending.

Ware. Selectmen of the town of Ware, petitioners. Commissioners appointed. Pending.

Hatfield, Selectmen of town of, petitioners. Connecticut River Railroad Company and Boston & Maine Railroad Company. Pending.

Middlesex County.

Lincoln. Fitchburg Railroad, petitioner. Pending.

Marlborough. Old Colony Railroad, petitioner. Fisher's crossing. Pending.

Ashland. Directors of Boston & Albany Railroad Company, petitioners. Commissioners appointed. Pending.

Somerville, Mayor and Aldermen of, petitioners. Pending.

Lowell, Mayor and Aldermen of, petitioners. Pawtucket and Church streets. Pending.

Natick. Directors of Boston & Albany Railroad, petitioners. Three petitions. Pending.

Newton, Mayor and Aldermen of city of, petitioners. Boston & Albany Railroad. Argued before full court. Decision made on accounting, Sept. 1, 1898. Pending.

Watertown, Selectmen of, petitioners. Commissioners appointed. Pending.

Waltham. Mayor and Aldermen of the city of Waltham, petitioners. Fitchburg Railroad Company. Pending.

Marlborough. Mayor and Aldermen of the city of Marlborough, petitioners. Fitchburg Railroad Company. Pending.

Arlington. Selectmen of the town of Arlington, petitioners. Pending.

Ayer. Selectmen of the town of Ayer and Directors of the Fitchburg Railroad Company, petitioners. Pending.

Cambridge. The Boston & Lowell Railroad, by its lessee the Boston & Maine Railroad, petitioner. Pending.

Concord. Selectmen of the town of Concord and Directors of the Fitchburg Railroad Company, petitioners. Pending.

Wakefield, Selectmen of, petitioners. Petition for the abolition of Hanson Street grade crossing in Wakefield. Pending.

Norfolk County.

Norwood, Selectmen of, and New York & New England Railroad, petitioners. Washington, Chapel and Guild streets and Railroad Avenue. Hearings. Pending.

Braintree. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Dedham. Selectmen of the town of Dedham, petitioners. Pending.

Stoughton. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Braintree. Directors of New York, New Haven & Hartford Railroad, petitioners. Pending.

Dedham. New York, New Haven & Hartford Railroad Company, petitioner. Pending.

Hyde Park. New York, New Haven & Hartford Railroad Company, petitioner. Pending.

Hyde Park. New England Railroad Company, petitioner. Pending. (This case and the two preceding were consolidated.)

Medway. Selectmen of the town of Medway, petitioners. Pending.

Canton. Selectmen of the town of Canton, petitioners. Pending.

Plymouth County.

Abington. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Brockton, Mayor and Aldermen of, petitioners. Commissioners appointed. Disposed of.

East Bridgewater. Directors of Old Colony Railroad Company, petitioners. Commissioners appointed. Disposed of.

Wareham. Directors of New York, New Haven & Hartford Railroad, petitioners. Disposed of.

Marshfield. Directors of New York, New Haven & Hartford Railroad, petitioners. Pending.

Hingham. New York, New Haven & Hartford Railroad Company, petitioner. Pending.

Middleborough. Selectmen of the town of Middleborough, petitioners. Pending.

Scituate. Selectmen of Scituate, petitioners. Pending.

Scituate. New York, New Haven & Hartford Railroad Company, directors, petitioners. Petition for the alteration of grade crossings at Water and Union streets. Pending.

Suffolk County.

Boston. Directors of Old Colony Railroad Company, petitioners. Tremont Street. Hearing. Pending.

Boston. Mayor and Aldermen of, petitioners. Six petitions:—

1. Austin, Cambridge and Perkins streets, Charlestown, crossing the tracks of the Boston & Maine Railroad. Pending.
2. Same streets as above, crossing the tracks of the Eastern Railroad Company. Pending.
3. Austin Street, Warren Avenue and Charles River Avenue, Charlestown, crossing the tracks of the Fitchburg Railroad Company. Pending.
4. Rutherford Avenue, Main Street and Chelsea Street, Charlestown, crossing the tracks of the Boston & Lowell Railroad Company. Pending.

5. Congress Street, South Boston, crossing the tracks of the New York & New England Railroad Company. Pending.
6. Dorchester Avenue, Dorchester, crossing the tracks of the Old Colony Railroad Company. Pending.

Boston. Directors of Old Colony Railroad Company, petitioners. Codman Street, Boston. Pending.

Chelsea, Mayor and Aldermen of, petitioners. Crossings on Chelsea bridge and Chelsea Bridge Avenue, over Boston & Maine Railroad. Under St. 1892, c. 374. Commissioners appointed. Hearing. Pending.

Dorchester Avenue, Boston. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

East Boston. Mayor and Aldermen of the city of Boston, petitioners. Boston & Maine Railroad Company, Boston & Albany Railroad Company and Boston, Revere Beach & Lynn Railroad Company. Pending.

Boston. Mayor and Aldermen of Boston, petitioners. Pending.

Boston. Mayor and Aldermen of Boston, petitioners. New England Railroad Company. Pending.

Boston. Mayor and Aldermen of Boston, petitioners. Pending.

Worcester County.

Athol, Selectmen of, petitioners. Commissioners appointed. Pending.

Auburn. Directors of Boston & Albany Railroad Company, petitioners. Pending.

Boylston, Selectmen of, petitioners. Commissioners appointed. Pending.

Clinton, Selectmen of, petitioners. Pending.

Templeton, Selectmen of, petitioners. Pending.

Southborough. Old Colony Railroad Company, petitioner. Pending.

Worcester, Mayor and Aldermen of, petitioners. Grafton, Green, Washington and Plymouth streets. Pending.

Worcester, Mayor and Aldermen of, petitioners. Millbrook, Garden, Lincoln, Market, School, Thomas, Central, Exchange, Summer and Shrewsbury streets. Pending.

Fitchburg, Mayor and Aldermen of, petitioners. Pending.

Leicester. Directors of Boston & Albany Railroad Company, petitioners. Pending.

Warren. Directors of Boston & Albany Railroad Company, petitioners. Pending.

Worcester. Directors of Boston & Albany Railroad Company, petitioners. Pending.

Northbridge, Selectmen of, petitioners (two petitions). Pending.

Millbury, Selectmen of, petitioners. Pending.

Uxbridge. Directors of New York, New Haven & Hartford Railroad Company, as lessee of the Providence and Worcester Railroad Company, petitioners. Pending.

Worcester, Mayor and Aldermen of, petitioners. Hamilton and Millbrook streets. Pending.

Warren. Directors of Boston & Albany Railroad, petitioners. Pending.

Holden. Selectmen of Holden, petitioners. Fitchburg Railroad Company. Pending.

Westborough. Selectmen of Westborough and Directors of Boston & Albany Railroad Company, petitioners. (In this case a controversy arose between the town and the Commonwealth as to the respective amounts to be paid in the construction of the proposed alterations. The case was argued before the commissioners, and a decision rendered in favor of the claim made by the Commonwealth.) Argued before full court. Report of commissioners confirmed. Pending.

Southborough. Directors of the New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Blackstone. Selectmen of Blackstone, petitioners. Pending.

Gardner. Selectmen of the town of Gardner, petitioners. Pending.

Leominster. Selectmen of the town of Leominster, petitioners. Pending.

Millbury. Selectmen of the town of Millbury, petitioners. Pending.

Sutton. Selectmen of the town of Sutton, petitioners. Pending.

Northbridge. Selectmen of Northbridge and Uxbridge, petitioners. Pending.

Gardner. Selectmen of Gardner, petitioners. Commissioners appointed. Pending.

Auburn. Selectmen of Auburn, petitioners. Pending.

Southborough. Selectmen of Southborough and Directors of New York, New Haven & Hartford Railroad Company, petitioners. Pending.

Northborough, Selectmen of, petitioners. Petition for the abolition of a grade crossing near "Westborough Hospital Station." Pending.

Fitchburg, Mayor and Aldermen of, petitioners. Petition for the abolition of grade crossings at Putnam Street in Fitchburg over the Vermont Central Railroad and Massachusetts Central Railroad. Pending.

Fitchburg, Mayor and Aldermen of, petitioners. Same as above, over Laurel Street. Pending.

Gardner, Selectmen of, petitioners. Petition for change of grade at Union Street crossing in Gardner. Pending.

The following corporations having made voluntary application to the Supreme Judicial Court for dissolution, and having given the Attorney-General due notice of the petition, and the Tax Commissioners having certified that they were not indebted to the Commonwealth for taxes, the Attorney-General waived the right to be heard:—

Abington Tack and Machine Association.
Boston Lighterage and Towing Company, The.
Boston Specialty and Toy Company.
Bradford Firemen's Relief Association.
Burke Heel Company, The.
Campbell Chemical Company.
Constitution Wharf Company.
Crossman-Jaquith Company.
Currier Telephone Bell Company, The.
Dahlquist Manufacturing Company.
De L. Sheplie Company.
E. I. Driskoll Company.
Edwin A. Stevens Shoe Company.
Emergency Hospital Association.
Eureka Box Toe Company.
F. B. Abbott Company.
F. E. Young Company, The.
German American Publishing Company, The.
Gloucester Co-operative Association.
J. Arthur Towle Shoe Company.
J. F. Bumstead Company, The.
Jenkins Rubber Company.
Lawrence Lime Company.
Lynn Slipper Company.
N. S. Liscomb & Sons (incorporated).
Neptune Fire and Marine Insurance Company.
New Bedford Steam Coasting Corporation.
Novelty Paper Box Company.
Nuabhaugeger Gegenseleger Koan Ken Nulrostulznugo
 Virim von Boston Highlands.
Park Overall Company.
Roxbury Stove Company.
Rubber Foot Company, The.

Shillaber and Company's Independent Labor Union.
Smith, Wilson & Sears Paper Company.
South Wellfleet Cranberry Association.
Speed Controller Appliance Company.
Star Foundry Company.
Taunton Electric Lighting Company.
Turner & Kimball Cabinet Company.
Waterhouse, Shannon & Munroe (incorporated).
Weight Machine Company.

The following corporations, reported to this department by the Tax Commissioner for delinquency in making their tax returns under Pub. Sts., c. 13, § 38, have been compelled, without the necessity of a suit at law, to comply with the statute:—

A. Colburn Boot and Shoe Company.
A. W. Warren Company.
Advertiser Newspaper Company.
Alta Manufacturing Company.
Altamonte Springs Company.
American Company, The.
American Publishing Company, The.
Amesbury and Salisbury Gas Company.
Atherton Machine Company.
Atlantic Box Manufacturing Company.
Barnstable County Street Railway Company.
Bay State Coal Company.
Bay State Hardware Company.
Bay State Packing Company.
Boston & Suburban Express Company.
Boston Co-operative Society.
Boston Credit Company, The.
Boston Cycle Company.
Boston Enterprise Manufacturing Company.
Boston Millinery Company.
Boston Paving Company.
Boston Woven Hose and Rubber Company.
Brookfield Brick Company.
C. B. Cook Laundry Company.
California Rasin Company.
Cantello Manufacturing Company.
Carter Paper Company.
Central Plating Works.
Charles Baker Company, The.

City Ice Company.
Commercial Cable Company.
Conant Hotel Company.
Co-operative Printing Society.
Crowell Manufacturing Company.
Daily News Company, The.
Dorchester Building Material Company.
Dorchester Safe Deposit and Trust Company.
E. H. Saxton Company.
Eastman Clock Company.
Elastic Tip Company.
F. L. Hewes Paint Company.
Farnam Brothers Lime Company.
Field-Hazzard Company.
Fiske Wharf and Warehouse Company.
Forest Grove Company.
Frank Keene Company.
Globe Foundry Company, The.
Golden Rule Company, The.
Great Barrington Coal Company.
Greylock Co-operative Creamery Association.
Greylock Park Association.
Harcourt Paper Box Company.
Haverhill Ice Company, The.
Holliston Water Company.
Holyoke Telegram Publishing Company, The.
Horace Partridge Company, The.
Horn and Supply Company, The.
Hyde Park Co-operative Association.
Ionic Knitting Company, The.
J. P. & W. H. Emond (incorporated).
J. S. Carr Company.
James Russell Boiler Works Company.
Jewett Lumber Company.
Joss Brothers Company.
Kelly Shoe Company, The.
L. H. Goodnow Foundry Company.
Lambeth Rope Company.
Liberty Masonic Association.
Linscott & Patten Cycle Company.
M. D. Stebbins Manufacturing Company.
Malden Stock Laundry Company.
Marlboro Gas Light Company.
Marshall Engine Company.

Massachusetts Fan Company.
Massachusetts Investment Company.
Massachusetts Manufacturing and Electrical Supply Company.
Middleby Oven Company.
Monson Woolen Company.
Montague Co-operative Creamery Association, The.
Mudge Shoe Company.
New Bedford Observation Wheel Manufacturing Company.
New England Clothing Company.
New England Dredging Company.
Nissitisset Hackney Breeding Association, The.
Norfolk Southern Street Railway Company.
Nutt-Hallett Company (incorporated), The.
Oak Grove Creamery Company, The.
Old Colony Rubber Company, The.
Palmer & Monson Street Railway Company.
Paphro D. Pike Company.
Parmenter Manufacturing Company, The.
Peabody Granite Company.
Peet Valve Company.
Peoples Lumber and Manufacturing Company.
Pilgrim Iron Foundry Company.
Quaboag Steamboat Company.
Reliable Underwear Company.
Rockland Hotel Company, The.
Rockport Gas Company.
Rogers Young Company, The.
Shady Hill Nursery Company.
Sheldon Brothers Company.
Simpson Spring Company.
Springfield Construction Company, The.
Springfield Co-operative Association, The.
Springfield Machine Screw Company, The.
Stiles & Winslow Leather Company.
Suffolk Brewing Company.
Symonds & Poor Company.
T. Casey Company.
Taunton Evening News.
Taunton Herald Company.
Thayer Woolen Company.
Thomas G. Plant Company.
Trench Lamp Company.

Tudor Company.
United States Finance Company.
Voorhees Electric Company.
Wachusett Mills.
Walnut Publishing Company.
Waltham Tribune Company.
Washburn & Moen Manufacturing Company.
Western Hampshire Street Railway Company.
White-Wilbar Shoe Company.
Woburn Electric Light Company.
Woburn Light, Heat and Power Company.
Woodward & Brown Piano Company.
Worcester Marble and Granite Company.
Worcester Post Company.
Worcester Steam Heating Company.
Worcester Storage Company.

The following corporations, reported to this department by the Commissioner of Corporations for delinquency in filing the certificate of condition required by Pub. Sts., c. 106, § 54, have been compelled, without the necessity of suit, to comply with the statute:—

Bardwell Anderson Company.
Bates Machine Company.
Brophy Brothers Shoe Company.
Simpson Spring Company.
F. P. Norton Cigar Company.

CASES ARISING UNDER THE COLLATERAL INHERITANCE TAX ACT.

[STATUTE 1891, CHAPTER 425.]

Sarah N. Trowbridge, estate of. Charles A. Merriam, executor, petitioner. Petition to the probate court of Suffolk County. Decree.

James A. Winslow, estate of. James H. Callahan, executor, petitioner. Petition for instructions to probate court of Suffolk County. Answer filed. Decree that property was taxable. Appeal to supreme judicial court. Decree that property was taxable. Appeal to full court. Decided Aug. 31, 1898. See *Callahan v. Woodbridge*, "BANKER AND TRADESMAN," Sept. 7, 1898.

Sally A. Dwight, estate of. Mary E. Wilson *et al.*, executors, petitioners. Petition to the probate court of Suffolk County. Answer filed. Decree. Appeal to supreme judicial court. Appeal waived.

Mary T. Porter, estate of. James S. Greves, executor, petitioner. Petition for instructions to probate court of Bristol County. Answer filed. Decree that property was taxable. Appeal to supreme judicial court. Hearing. Reserved for full court. Argued. Not decided.

Joseph Frothingham, estate of. James H. Frothingham, executor, petitioner. Petition to the probate court of Essex County. Answer filed. Decree that property is taxable. Appeal taken to supreme judicial court. Decree that property is taxable. Appeal to full court. Pending.

Emma C. Adams, estate of. Frederick C. Abbe, executor. Petition to the probate court of Hampden County. Answer filed. Pending.

William H. Brown, estate of. George W. Brown, executor. Petition to the probate court of Essex County. Answer filed. Pending.

Lucinda R. Parker, estate of. Samuel P. Hadley *et al.*, executors, petitioners. Petition to the probate court of Middlesex County. Answer filed. Decree.

Lucinda R. Parker, estate of. Congregational Home Missionary Society, petitioner. Petition to the probate court of Middlesex County for reappraisal of legacy to petitioner. Service accepted and appraisers appointed. Decree.

George W. Wales, estate of. Nathaniel H. Emmons *et al.*, executors, petitioners. Petition for instructions to the probate court of Suffolk County. Answer filed. Decree that property was taxable. Appeal to supreme judicial court. Hearing. Reserved for full court. Argued. Decided June 22, 1898. See Emmons *v.* Shaw, "Banker and Tradesman," June 29, 1898.

James A. Baldwin, estate of. Francis Norton, executor and trustee. Petition to the probate court of Hampden County for instructions. Appearance entered. Decree. Appeal taken. Appeal waived.

Belinda L. Randall, estate of. Francis V. Balch *et al.*, trustees. Petition to the probate court of Suffolk County for instructions. Appearance entered. Answer filed. Pending. Decree that property was taxable. Appeal to supreme judicial court. Decree that property was not taxable. Appeal to full court. Pending.

Frederick H. Odiorne, estate of. Odiorne Swain, executor, petitioner. Petition to the probate court of Middlesex County for instructions. Appearance entered. Answer filed. Decree.

Mary M. Abbott, estate of. John B. Brown, executor. Petition to probate court of Middlesex County for extension of time under St. 1891, c. 425. Hearing. Pending.

Uriel H. Crocker, trustee under a deed of trust of Alfred Ladd *et al.*, *v.* E. P. Shaw, treasurer. Petition for instructions as to amount of collateral inheritance tax. Answer filed. Decree that estate is subject to tax. Appeal to supreme judicial court. Pending.

Austin P. Day, estate of. Mary E. Stoddard, executrix of the will of. Petition to the probate court of Suffolk County. Appearance entered. Pending.

Elizabeth Torrey, estate of. Caroline B. Warren *et als.*, legatees of. Petition to the probate court of Middlesex County for reappraisal. Decree.

John S. H. Fogg, estate of. Charles M. Cumston, executor of the will of. Petition to the probate court of Middlesex County. Appearance entered. Decree.

Walter Parkhurst, estate of. Charles H. Chapman, executor of the will of. Petition to the probate court of Middlesex County for reappraisal. Decree.

Ralph Huntington, estate of. Joseph H. White *et al.*, trustees under the will of. Petition to the probate court of Suffolk County. Pending.

John Spink, estate of. Daisy E. Thurston *et al.*, devisees. Petition to the probate court of Bristol County for reappraisal. Decree on inventory.

Stephen C. Williams, estate of. Luther Adams, one of the executors of the will of. Petition to the probate court of Essex County. Appearance entered. Pending.

Mary C. Ames, estate of. Franklin T. Hammond, administrator with the will annexed, petitioner. Petition to the probate court of Middlesex County. Appearance entered. Pending.

George Ames, petitioner. Petition to the probate court of Middlesex County for reappraisal. Pending.

Cordelia L. Eaton, estate of. Charles W. Eaton, petitioner. Petition to the probate court of Middlesex County for appraisal of that part of estate devised to the petitioner. Pending.

Wilhelmina Harbordl, estate of. Caroline P. Currier *et al.*, executors, petitioners. Petition to the probate court of Norfolk County to abate interest on collateral inheritance. Attorney-General waived right to be heard.

Minerva Cushing, estate of. John C. Hollis *et al.*, executors, petitioners. Petition to the probate court of Suffolk County. Attorney-General waived right to be heard.

John W. Shaw, estate of. Petition to the probate court of Norfolk County for appraisal of personal property for the purpose of a collateral inheritance tax. Attorney-General waived right to be heard.

Thomas Downing, estate of. F. P. Hall *et al.*, executors of, petitioners. Petition for instructions. Attorney-General waived right to be heard.

Charles H. Allen, estate of. Frederick H. Stebbins, executor, petitioner. Petition to probate court of Hampden County for extension of time under St. 1891. Hearing and time extended.

Mary French Geyer, estate of. Josiah G. Coburn, executor, petitioner. Petition to the probate court of Suffolk County for instructions. Decree.

Olive O. Moulton, estate of. Henry M. Batchelder, executor, petitioner. Petition to the probate court of Essex County for extension of time for payment of collateral inheritance tax. Pending.

Henry B. Lewis, estate of. Petition to the probate court of Hampden County, accepting appraisers' return. Attorney-General waived right to be heard.

James H. Carleton, estate of. Henry S. Howe *et als.*, petitioners. Petition to the probate court of Essex County for determination of collateral inheritance tax and extension of time. Pending.

Mary A. Phelon, estate of. John G. Freeland, executor, petitioner. Petition to the probate court of Hampden County for extension of time for payment of collateral inheritance tax. Hearing, and petition denied.

Catherine Harkins, estate of. Patrick J. Harkins, executor, petitioner. Petition to the probate court of Hampden County for extension of time. Decree extending time when tax may become due.

Nathan Tucker, estate of. William N. Tucker, executor, petitioner. Petition to the probate court of Norfolk County. Attorney-General waived right to be heard.

Hiram Taylor, estate of. Carrie E. Taylor *et als.*, executrix, petitioners. Petition to the probate court of Hampshire County to determine what legacies are subject to a collateral inheritance tax. Pending.

Hiram Taylor, estate of. Carrie E. Taylor *et al.*, executors, petitioners. Petition to probate court of Hampshire County for appointment of appraiser. Petition granted.

Sarah S. Lincoln, estate of. Henry C. Weston, executor, petitioner. Petition to the probate court of Middlesex County for reappraisal of estate for the purposes of a collateral inheritance tax. Attorney-General waived right to be heard.

Lucy V. Potter, estate of. Rhode Island Hospital Trust Company, petitioner. Petition to the probate court of Bristol County for license to receive personal property within the Commonwealth. Attorney-General waived right to be heard.

Mary E. Blake, estate of. Henry A. Shute, administrator, petitioner. Petition to the probate court of Essex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

John A. Blake, estate of. Henry A. Shute, executor, petitioner. Petition to the probate court of Essex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Shadrach Drew, estate of. William B. Rundlett, administrator, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

William B. Dodge, estate of. Lycurgus J. C. Drennen, petitioner. Petition to the probate court of Essex County for license to receive personal property within this Commonwealth. Attorney-General waived right to be heard.

Sarah T. Marsh, estate of. Mary G. Sawyer, petitioner. Petition to the probate court of Essex County for the appointment of appraiser. Appraiser appointed.

John French, estate of. H. A. Shute, administrator, petitioner. Petition to the probate court of Essex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Henry B. Lewis, estate of. Homer B. Stevens, administrator, petitioner. Petition to the probate court of Hampden County for reappraisal. Appraisal returned and accepted.

Charles Harrington, estate of. Richard Harrington *et als.*, executors, petitioners. Petition to the probate court of Essex County for instructions as to a collateral inheritance tax. Decree.

Amorset P. Case, estate of. James H. Taintor, administrator, petitioner, Hampden County. Final account of administrator of estate liable to collateral inheritance tax. Account allowed.

Elizabeth M. Fletcher, estate of. Melvina W. Sanders, petitioner. Petition to the probate court of Middlesex County for re-appraisal. Decree.

John Blackler, estate of. Wm. Gilley, executor, petitioner. Petition to the probate court of Essex County for extension of time for payment of collateral inheritance tax. Decree.

Meta T. W. Pitts, estate of. William B. Wilson, executor, petitioner. Petition to the probate court of Suffolk County for extension of time for payment of collateral inheritance tax. Attorney-General waived right to be heard.

P. Jane Batchelder, estate of. James A. Bancroft, executor, petitioner. Petition to the probate court of Middlesex County for instructions as to collateral tax. Decree.

William H. Chessman, estate of. Benj. F. Brown *et als.*, executors, petitioners. Petition to the probate court of Suffolk County. Pending.

Mary J. Grout, estate of. Henry Billings, executor, petitioner. Petition to the probate court of Worcester County to determine if collateral tax is due on estate of said deceased. Decree that said estate is not taxable.

James A. Montgomery, estate of. John F. Lincoln *et al.*, executors, petitioners. Petition to the probate court of Essex County for extension of time for payment of collateral inheritance tax. Attorney-General waived right to be heard.

John L. Bush, estate of. Henry P. Howland, executor, petitioner. Petition to the probate court of Worcester County to determine what legacies bequeathed by said will are subject to collateral tax. Decree that legacies bequeathed by the third and fifth clauses are subject to tax.

Jacob W. Sanborn, estate of. Lewis W. Sanborn, executor, petitioner. Petition to the probate court of Essex County for license to receive personal estate within this Commonwealth. Attorney-General waived right to be heard.

Maria L. Hawes, estate of. Lewis T. Fisher, petitioner. Petition to the probate court of Suffolk County for appraisal to determine the amount of collateral inheritance tax. Attorney-General waived right to be heard.

Amos W. Southwick, estate of. Francis B. Southwick, administrator, petitioner. Petition to the probate court of Suffolk County to abate interest on collateral inheritance tax. Tax waived.

Joseph W. Symonds, estate of. Charles W. Richardson, executor, petitioner. Petition to the probate court of Essex County. Decree.

Chester Kellogg, estate of. Mary A. Kellogg, petitioner. Petition to the probate court of Hampden County for reappraisal. Pending.

Chester Kellogg, estate of. Mary A. Kellogg *et al.*, administrators, petitioners. Petition to the probate court of Hampden County to determine amount of collateral inheritance tax. Pending.

Thomas Doane, estate of. David B. Perry *et al.*, executors, petitioners. Petition to the probate court of Suffolk County for extension of time for payment of collateral inheritance tax. Attorney-General waived right to be heard.

Harriet S. Symmes, estate of. Charles T. Symmes, executor, petitioner. Petition for the allowance of final account. Attorney-General waived right to be heard.

Sarah F. Coggswell, estate of. Samuel W. Hopkinson, executor, petitioner. Petition to the probate court of Essex County. Pending.

George Sampson, estate of. Rebecca F. Sampson *et al.*, executors, petitioners. Petition to the probate court of Suffolk County. Decree.

Charles Lunt, estate of. Chas. H. Lunt *et als.*, executors, petitioners. Petition to the probate court of Essex County for reappraisal. Attorney-General waived right to be heard.

Mary E. Vinal, estate of. Quincy A. Vinal, executor, petitioner. Petition to the probate court of Middlesex County to abate interest on collateral inheritance tax. Answer filed. Pending.

Martha M. Willard, estate of. Chas. B. Cobleigh, *et als.*, executors, petitioners. Petition to the probate court of Middlesex County for the allowance of final account. Attorney-General waived right to be heard.

Mary Adams, estate of. John B. Rhodes, executor, petitioner. Petition to the probate court of Suffolk County for the allowance of final account. Attorney-General waived right to be heard.

Mary L. Draper, estate of. Francis G. Conklin *et als.*, petitioners. Petition to the probate court of Hampden County for reappraisal. Pending.

Francis B. Hayes, estate of. Augustus P. Loring, executor, petitioner. Petition to the probate court of Middlesex County for extension of time for payment of collateral inheritance tax.

Job B. Sherman, estate of. Pardon G. Thomas, executor, petitioners. Petition to the probate court of Bristol County for extension of time of payment of tax and reappraisal. Decree on inventory. Final account allowed.

Almeda N. Bates, estate of. Chas. A. Emery *et als.*, executors, petitioners. Petition to probate court of Hampden County for reappraisal to fix amount of certain fees. Pending.

Elizabeth A. Webster, estate of. Melvina M. Webster *et als.*, petitioners. Petition to the probate court of Essex County for reappraisal. Waived right to be heard on question of acceptance of inventory and upon question of appraisers' fees.

Rebecca Salisbury, estate of. Charles Chauncey *et als.*, executors, petitioners. Petition to the probate court of Suffolk County for instructions. Decree.

Julia A. Ladd, estate of. Herman S. Hoyt, trustee, petitioner. Petition to the probate court of Middlesex County for instructions. Decree.

Adaline M. Faulkner, estate of. Carrie M. Whitcomb, petitioner. Petition to the probate court of Middlesex County for the appointment of appraisers. Decree.

Peter A. McKenna, estate of. Thomas F. Cusack, executor, petitioner. Petition to the probate court of Middlesex County. Decree that bequest is not subject to tax.

Joseph S. Brockaway, estate of. John E. Paige, trustee, petitioner. Petition to the probate court of Essex County for the suspension of the payment of a collateral inheritance tax. Attorney-General waived right to be heard.

Thomas Marshall, estate of. Francis H. Shaw, trustee, petitioner. Petition to the probate court of Worcester County for instructions as to collateral tax. Decree.

Hannah Day, estate of. William E. Day *et al.*, petitioners. Petition to the probate court of Hampden County for reappraisal. Attorney-General waived right to be heard on return of appraisers.

Samuel Blakely, estate of. George H. Gale, executor, petitioner. Petition to the probate court of Middlesex County for extension of time of payment of collateral tax. Pending.

George W. Davis, estate of. Linus E. Pearson, executor, petitioner. Petition to the probate court of Suffolk County. Pending.

Samuel B. I. Goddard, estate of. Charles R. Johnson, executor, petitioner. Petition to the probate court of Worcester County for instructions as to collateral tax. Decree.

Charles A. Winthrop, estate of. Felix Rackemann, executor, petitioner. Petition to the probate court of Suffolk County. Waived right to be heard on decree fixing amount of collateral tax.

Rufus G. A. Freeman, estate of. George T. Moody, executor, petitioner. Petition to the probate court of Suffolk County. Decree. Reserved for full court. Argued before supreme judicial court. Not yet decided.

Mary A. Phelon, estate of. John H. Freeland, executor, petitioner. Petition to the probate court of Hampden County. Attorney-General waived right to be heard.

Sarah Parker, estate of. George S. Hale *et als.*, executors, petitioners. Petition to the probate court of Suffolk County for allowance of final account. Hearing. Account allowed.

Abby C. Pratt, estate of. Emma A. Pratt, executrix, petitioner. Petition to the probate court of Worcester County to suspend payment of collateral tax. Decree.

Mary C. Gage, estate of. James E. Barnard, executor, petitioner. Petition to the probate court of Middlesex County to withdraw deposit. Attorney-General waived right to be heard.

Frederick Budden, estate of. Charles Budden, administrator, petitioner. Petition to the probate court of Middlesex County to withdraw deposit. Attorney-General waived right to be heard.

Sarah S. Lincoln, estate of. Henry C. Weston, executor, petitioner. Petition to the probate court of Middlesex County for reappraisal. Decree.

Helen M. Fiske, estate of. Reddington Fiske, trustee, petitioner. Petition to the probate court of Suffolk County for the allowance of final account. Attorney-General waived right to be heard.

Dwight L. Dimmock, estate of. Samuel L. Chase, executor, petitioner. Petition to the probate court of Middlesex County for instructions as to whether estate is subject to collateral tax. Pending.

John Preston, estate of. Samuel A. Johnson, executor, petitioner. Petition to the probate court of Essex County to extend time for payment of collateral inheritance tax. Decree.

Mary W. Hutchinson, estate of. Oliver H. Perry, administrator, petitioner. Petition to the probate court of Middlesex County for leave to receive personal estate within this Commonwealth. Attorney-General waived right to be heard.

Caroline E. Makepeace, estate of. Charles R. Makepeace, administrator, petitioner. Petition to the probate court of Bristol County for license to receive personal estate within this Commonwealth. Decree.

Jonathan Walton, estate of. Samuel S. Walton *et al.*, petitioners. Petition to the probate court of Essex County for license to receive personal estate within the Commonwealth. Pending.

Eliza Needham, estate of. Edward B. Webb, executor, petitioner. Petition to the probate court of Essex County for license to receive personal estate within this Commonwealth. Attorney-General waived right to be heard.

Sarah A. Allen, estate of. Mary C. Lee, administratrix, petitioner. Petition to the probate court of Hampden County for license to receive certain personal estate in this Commonwealth. Attorney-General waived right to be heard.

Oliver M. Hyde, estate of. Arthur A. Hyde, executor, petitioner. Petition to the probate court of Hampden County for license to receive personal estate in this Commonwealth. Decree.

William H. Hall, estate of. Charles H. Harker, administrator, with will annexed, petitioner. Petition to the probate court of Norfolk County to appoint appraisers to appraise part of estate of John R. Hall remaining undivided at the death of William H. Hall. Appraisers appointed.

Frank P. Sawyer, estate of. Herbert J. Jones, administrator, petitioner. Petition to the probate court of Essex County for license to receive personal estate within this Commonwealth. Attorney-General waived right to be heard.

James H. Carleton, estate of. Petition to the probate court of Essex County for allowance of executors' third and fourth accounts. Pending.

Jonas Keyes, estate of. Frederick A. Keyes, administrator, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in Massachusetts. Attorney-General waived right to be heard.

Sarah J. Sherman, estate of. Henry C. Sherman, executor, petitioner. Petition to the probate court of Hampden County for instructions under said will. Answer filed.

Mary M. Daniels, estate of. Frank A. Appleton, executor, petitioner. Petition to the probate court of Suffolk County for suspension of payment of collateral inheritance tax. Decree.

James B. Francis, estate of. James Francis, executor, petitioner. Petition to the probate court of Middlesex County for extension of time for payment of collateral inheritance tax. Attorney-General waived right to be heard.

Stephen K. Taylor, estate of. Petition to the probate court of Essex County. Attorney-General waived right to be heard.

Sackville Arthur Cecil, estate of. Margaret Elizabeth Cecil *et al.*, executors, petitioners. Petition to the probate court of Suffolk County. Decree.Appealed to the supreme judicial court. Appeal waived.

Eliza A. Haven, estate of. Petition to the probate court of Suffolk County. Pending.

Crosby Knox, estate of. Lula A. Knox, executrix, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Horace B. Buck, estate of. Eliza A. Buck, executrix, petitioner. Petition to the probate court of Worcester County for instructions regarding the collateral inheritance tax. Hearing. Pending.

Joseph F. Pollard, estate of. Emily Pollard, administratrix, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Lizzie R. Cummings Lownes, estate of. G. B. Lownes, administrator, petitioner. Petition to the probate court of Essex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Cornelia E. Green, estate of. Arnold Green, executor, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Hearing. Decree.

Sarah A. Gibson, estate of. Susan M. Smith, executrix, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Jonathan Walton, estate of. Samuel S. Walton *et al.*, executors, petitioners. Petition to the probate court of Essex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Agnes E. H. Edwards, estate of. Petition to the probate court of Norfolk County for instructions as to whether the estate is subject to a collateral inheritance tax. Hearing. Decree that no tax is due the State.

Richard Formby, estate of. Miles Formby, executor, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Joseph F. Strout, estate of. Abbie E. Varrill, executrix, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Ada Augusta Draper, estate of. Petition to the probate court of Suffolk County for the appointment of trustees under the will of said deceased. Waived notice.

Sarah M. Burr, estate of. Petition to the probate court of Suffolk County for extension of time of payment of collateral inheritance tax. Decree.

Mary W. Clarke, estate of. Fanny H. Carleton, executrix, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Decree.

John P. Perry, estate of. Alexander W. Tucker, executor, petitioner. Petition to the probate court of Middlesex County by the Treasurer of the Commonwealth for reappraisal. Appraisers appointed. Report of appraisers accepted.

Charlotte L. Martens, estate of. James W. Martens, administrator, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Edward A. Adams, estate of. Charles T. Gallagher *et al.*, administrators, petitioners. Petition to the probate court of Middlesex County for instructions as to whether a collateral inheritance tax shall be paid under fourth item of will. Decree.

Marian Hovey, estate of. Henry S. Hovey *et al.*, executors, petitioners. Petition to the probate court of Essex County for extension of time until it may be determined when a collateral inheritance tax is due, and for license to pay residue of estate to the trustees appointed by the will. Attorney-General waived right to be heard.

Marian Hovey, estate of. Henry S. Hovey *et al.*, executors, petitioners. Petition to the probate court of Essex County for license to convey property to trustees appointed under the will of the deceased upon the payment of a collateral inheritance tax upon life estates, and upon payment of a sufficient amount from the residue of the estate to pay collateral inheritance tax upon contingent interests in case any are payable in future. Attorney-General waived right to be heard.

Abby L. H. Barnett, estate of. Charles H. Heath *et al.*, executors, petitioners. Petition to the probate court of Norfolk County for instructions as to whether said estate is subject to a collateral inheritance tax. Pending.

Warren G. Roby, estate of. George F. Piper *et al.*, executors, petitioners. Petition to the probate court of Middlesex County for instructions. Decree.

Salome B. Chase, estate of. David W. Potter, executor, petitioner. Petition to the probate court of Essex County for license to receive personal property in this Commonwealth. Pending.

Miles Spaulding, estate of. Petition to the probate court of Middlesex County for allowance of executor's account. Decree allowing account.

Usher A. Hall, estate of. Olive S. Hall, executrix, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Emeline C. Bulkley, estate of. James Haylett, administrator, petitioner. Petition to the probate court of Middlesex County for license to receive personal property in this Commonwealth. Attorney-General waived right to be heard.

John Quealy, estate of. John G. Maguire, executor, petitioner. Petition to the probate court of Middlesex County for instructions as to whether a collateral inheritance tax is payable under said will. Pending.

Joanna Gleason, estate of. Charles H. Walcott, executor, petitioner. Petition to the probate court of Middlesex County for instructions as to whether a collateral inheritance tax is due under said will. Pending.

Warren G. Roby, estate of. George F. Piper *et al.*, executors, petitioners. Petition to the probate court of Middlesex County for instructions as to the payment of a collateral inheritance tax. Attorney-General waived right to be heard.

John Foster, estate of. Charles U. Cutting *et als.*, executors, petitioners. Petition to the probate court of Suffolk County for instruction regarding the payment of a collateral inheritance tax. Pending.

Harriet A. O. Foster, estate of. George E. Bates, administrator, petitioner. Petition to the probate court of Middlesex County for license to receive personal estate in this Commonwealth. Pending.

Caroline C. Shackford, estate of. Daniel B. Shackford, administrator, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Decree.

Mary E. S. Kimball, estate of. Mary Grace Kimball, executrix, petitioner. Petition to the probate court of Suffolk County for license to receive personal estate in this Commonwealth. Attorney-General waived right to be heard.

Mary C. Huckins, estate of. Charles F. Berry, administrator, with will annexed, petitioner. Petition to the probate court of Suffolk County to determine amount of collateral inheritance tax. Attorney-General waived right to be heard.

Samuel C. Buckman, estate of. Charles L. Robertson *et als.*, executors, petitioners. Petition to the probate court of Middlesex County for instructions as to whether a collateral inheritance tax is due and payable under certain legacies. Pending.

Helen M. Grover, estate of. Albert F. Conant, executor, petitioner. Petition to the probate court of Suffolk County for instructions as to whether a collateral inheritance tax is due and payable on certain sums or annuities given by said will. Pending.

Joseph Cartland, estate of. Gertrude W. Cartland, executrix, petitioner. Petition to the probate court of Essex County for extension of the time of payment of collateral inheritance tax until the death of Gertrude W. Cortland, widow of the deceased. Decree.

PUBLIC CHARITABLE TRUSTS.

Joseph B. F. Osgood *et al.*, executors of the will of Caroline A. Lord, petitioners, *v.* the Attorney-General *et al.* Petition to the probate court of Essex County upon the declination of the trustee to carry out a trust. Decree.

St. Walston Society *v.* Attorney-General *et al.* Petition to the supreme judicial court of Worcester County to reconvey land. Answer. Decree.

Essex Agricultural Society *v.* Massachusetts General Hospital Corporation and the Attorney-General. Petition to the supreme judicial court of Essex County to sell real estate and to apply the doctrine of *cy-pres*. Service accepted. Petition dismissed. Petitioner appealed. Pending.

Charles H. Goulding *et al.*, School Committee of Peabody, petitioners. Bill in equity in the supreme judicial court of Essex County, praying for a decree declaring a certain fund a public charitable gift. Service accepted. Reserved for full court. Decided. Reported, 170 Mass. 483.

Attorney-General, petitioner. Petition to the probate court of Suffolk County for the appointment of trustees under the will of Benjamin Franklin. Appearance entered. Hearing. Henry L. Higginson, Francis C. Welch, A. Shuman, Chas. T. Gallagher, Rev. Chas. W. Duane, Stopford Brooke and Alexander K. McLennan appointed trustees. Pending.

Trustees of Tufts College *v.* City of Boston *et al.* Petition to the supreme judicial court of Suffolk County to obtain consent of court for selling real estate devised by will of Silvanus Packard. Appearance entered. Answer filed. Decree.

Charles F. Sawtell, administrator, *v.* the Board of Ministerial Aid *et al.* Petition to the superior court of Worcester County for instructions. Decree.

Tufts College Trustees *v.* City of Boston. Petition to the supreme judicial court of Suffolk County to sell real estate devised under the will of Silvanus Packard. Appearance entered. Decree.

Sarah A. W. Devens, estate of. William Minot *et al.*, trustees, petitioners. Finished.

Sylvia Ann Howland, estate of. Petition to the probate court of Bristol County that a letter of appointment may issue to Oliver Prescott, Jr., under the tenth clause of the will of said deceased in place of Lemuel T. Terry, deceased. Attorney-General waived right to be heard.

Benjamin Neal, estate of. Uriah H. Crocker, trustee, petitioner. Petition to the probate court of Suffolk County for leave to sell certain real estate. Attorney-General waived right to be heard.

Patrick Murray, estate of. Petition for distribution of trust estate to heirs. Attorney-General waived right to be heard.

Moses Warren Edwards, estate of. Petition to the probate court of Essex County for construction of item 6 of the will of said deceased, to determine if said item is valid. Decree.

Charles H. Holmes, estate of. Salmon D. Hood, executor, petitioner. Petition to the supreme judicial court of Suffolk County for construction of the residuary clause of the will of said deceased. Pending.

Murdock Fund. Petition for the appointment of Joseph N. White as trustee, in place of Edward C. Thayer, deceased. Attorney-General waived right to be heard.

Jane B. Packer, estate of. Emerson C. Strange, petitioner. Petition to the probate court of Bristol County for appointment of trustee under deed of Jane B. Packer. Decree.

Hiram V. Gould *et al.* Petition to the probate court of Suffolk County for the appointment of trustees for the Society of Friends in Boston. Attorney-General waived right to be heard.

Ralph Huntington, estate of. James H. White *et al.*, trustees, petitioners. Petition to the probate court of Suffolk County for instructions concerning the administration of a trust fund devoted in part to public charity. Attorney-General waived right to be heard.

Moses W. Edwards, estate of. Orin Warren, executor, petitioner. Petition to the probate court of Essex County for the construction of the will of the deceased relating to a public charity. Decree.

John J. Williams *et al.*, petitioners. Petition for the appointment of trustees under a public charitable trust. Attorney-General waived right to be heard.

Ebenezer Pope, estate of. Hiram V. Gould *et al.*, trustees, petitioners. Petition to the probate court of Suffolk County for instructions regarding a public charitable trust. Attorney-General waived right to be heard.

Margaret Ann Hanrahan, estate of. Hannah Pierce, executor, petitioner. Petition to the probate court of Hampden County for the probate of will and assignment of letters testamentary and trusteeship to Hannah Pierce. Decree.

First Independent Baptist Church Society, Kendall Taylor *et al.*, trustees, petitioners. Petitioner to the probate court of Suffolk County for leave to sell and convey real estate held in trust. Attorney-General waived right to be heard.

Proprietors of North Chelmsford Meeting House, trustees *v.* Caroline S. Belcher *et als.* and the Attorney-General. Petition for discharge of trustees and appointment of new. Attorney-General waived right to be heard.

Hill, Sarah J., estate of. Petition to the probate court of Middlesex County as to the allowance of the will of said testatrix, there being no heirs at law. Attorney-General waived right to be heard.

The following cases have been brought for alleged land damages incurred in the alteration of grade crossings. The Commonwealth, being obliged under the statutes to pay at least twenty-five per cent. of the expenses incurred in the alteration of all grade crossings, has in all cases been made a party thereto.

Isabel H. Waters *et al. v.* Town of Millbury. Superior court, Worcester County. Judgment.

Patrick Brick *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Mary Casey *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Mary Simpson *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

F. R. Ellwell *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Elizabeth N. Thompson *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Melvin L. Graves *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Sarah Delano *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

John A. Sullivan *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Charles S. Crouch *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Dwight A. Horton *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

John A. Partridge *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

William M. Trow *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Charles P. Damon *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

William H. Clapp *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

William H. Clapp, trustee, *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

John A. Sullivan *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

John A. Kearns *v.* Connecticut River Railroad *et als.* Superior court, Hampshire County. Pending.

Arthur C. Guilford *v* New Haven & Northampton Company *et als.* Superior court, Hampshire County. Pending.

Lizzie E. Orcutt *et al. v.* New Haven & Northampton Company. Superior court, Hampshire County. Judgment.

Martha H. Shuman *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Maria Graves *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Lovina S. Harlow *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

William F. Kingsley *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

John Casey *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Timothy Sullivan *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

John Sullivan *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Timothy Sullivan *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Michael J. Reardon *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Patrick Sullivan *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

William J. Hall *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Catherine Keating *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Sophia C. Pittsinger *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Robert Monsey *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Addie Goodchild *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Patrick McCarthy *v.* Boston & Maine Railroad *et als.* Superior court, Hampshire County. Judgment.

Margaret Harris *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Martha E. Dickerson *v.* Boston & Maine Railroad *et als.* Superior court, Hampshire County. Pending.

Thomas D. Beaven *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Martin Finn *et al. v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

John Rourke *et al. v.* Boston & Maine Railroad *et als.* Superior court, Hampshire County. Judgment.

John A. Keaines *v.* Boston & Maine Railroad *et al.* Superior court, Hampshire County. Pending.

Daniel Finn *v.* Boston & Maine Railroad *et als.* Superior court, Hampshire County. Judgment.

Elizabeth C. Guilford *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

James M. Meade *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Timothy Sullivan *v.* City of Northampton *et als.* Superior court, Hampshire County. Pending.

Michael J. Reardon *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Edmund O'Keefe *v.* City of Northampton *et als.* Superior court, Hampshire County. Judgment.

Commonwealth of Massachusetts *v.* City of Boston *et als.* Superior court, Suffolk County. Pending.

Commonwealth of Massachusetts *v.* City of Boston *et als.* Superior court, Suffolk County. Pending.

Robert Codman *et als. v.* New England Railroad Company *et als.* Superior court, Suffolk County. Pending.

City of Boston *v.* Boston Wharf Company *et als.* Superior court, Suffolk County. Pending.

SUITS CONDUCTED BY THE ATTORNEY-GENERAL IN BEHALF OF STATE BOARDS AND COMMISSIONS.

The following cases have been reported to this department by State boards and commissions, to be conducted by the Attorney-General or under his direction, pursuant to the provisions of St. 1896, c. 490: —

1. METROPOLITAN PARK COMMISSION.

Petitions to the superior court for assessment of damages alleged to have been sustained by the taking of land by the said commission: —

Aaron D. Weld, Francis C. Welch, trustees, *v.* Commonwealth. Suffolk County. Pending.

Henry S. Grew *et al.* *v.* Commonwealth. Suffolk County. Settled by agreement for \$5,496.

Henry S. Grew *et al.* *v.* Commonwealth. Norfolk County. Settled by agreement for \$11,547.50.

George S. Hale *et al.*, executors of Radcliffe College, *v.* Commonwealth. Norfolk County. Settled by agreement for \$2,030.18.

Inhabitants of Hyde Park *v.* Commonwealth. Norfolk County. Settled by agreement for \$5,035.

Aaron D. Weld *et al.*, trustees, *v.* Commonwealth. Norfolk County. Settled by agreement for \$1,050.

Washington G. Benedict *et als.* *v.* Commonwealth. Suffolk County. Settled.

Jacob W. Seaver *v.* Commonwealth. Norfolk County. Settled by agreement for \$1,445.

Henry S. Benton, trustee, *v.* Commonwealth. Norfolk County. Settled by agreement for \$1,020.

Robert Bleakie *v.* Commonwealth. Norfolk County. Settled by agreement for \$367.50.

Saco and Biddeford Savings Institution *v.* Commonwealth. Norfolk County. Settled by agreement \$250 per acre.

Real Estate and Building Company *v.* Commonwealth. Norfolk County. Settled by agreement for \$5,267.50.

John C. Lincoln *v.* Commonwealth. Norfolk County. Settled by agreement for \$1,440.

George S. Lee, trustee, Andrew Webster *et al.*, trustees, *v.* Commonwealth. Suffolk County. Settled by agreement for \$2,145.

George S. Lee, trustee, A. G. Webster *et al.*, trustees, *v.* Commonwealth. Norfolk County. Settled by agreement for \$16,717.50.

Charles H. Crummett *v.* Commonwealth. Norfolk County. Settled by agreement for \$1,577.50.

Frank B. Homans, administrator, *v.* Commonwealth. Norfolk County. Pending. Settled, together with the following case, for \$610.42.

Frank B. Homans *v.* Commonwealth. Norfolk County. Pending. Settled, together with the preceding case, for \$610.42.

President and Fellows of Harvard College *v.* Commonwealth. Suffolk County. Settled by agreement for \$9,104.81.

J. Thomas Baldwin *v.* Commonwealth. Suffolk County. Settled by agreement for \$52,000.

George W. Fifield, administrator, *et al. v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *et al. v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

George W. Fifield, administrator, *et al. v.* Commonwealth. Suffolk County. Settled by agreement for \$1,500, with interest.

George W. Fifield, administrator, *et al. v.* Commonwealth. Suffolk County. Trial by jury. Verdict, \$41,571.78.

George W. Fifield, administrator, *et als. v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

George W. Fifield, administrator, *et als. v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

Arthur D. McClellan *v.* Commonwealth. Suffolk County. Settled by agreement for \$800 and interest.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Trial by jury. Verdict, \$5,815.22.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Pending.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Settled by agreement.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Settled by agreement.

Arthur D. McClellan *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *v.* Commonwealth. Suffolk County. Pending.

George W. Fifield, administrator of Charles S. Fifield, *v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

George W. Fifield, administrator, *et al. v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *et al. v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Fifield, administrator, *et al. v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Arthur D. McClellan *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George S. Lee, trustee, *et al. v.* Boston & Maine Railroad Company. Middlesex County. Pending.

Wheelwright Scientific School *v.* Commonwealth. Middlesex County. Trial by jury. Verdict for \$3,743.74.

George A. Gibson *v.* Commonwealth. Middlesex County. Settled by agreement for \$5,500.

Leopold Morse Home for Infirm Hebrews and Orphanage *v.* Commonwealth. Norfolk County. This and following case settled by agreement for \$14,500.

Leopold Morse Home for Infirm Hebrews and Orphanage *v.* Commonwealth. Norfolk County. Settled by agreement.

Charles E. Willard *v.* Commonwealth. Suffolk County. Settled by agreement for \$2,100.

Charles E. Dearborn *v.* Commonwealth. Suffolk County. Pending.

John Norris *v.* Commonwealth. Suffolk County. Pending. Settled, together with the following case, for \$5,000.

John Norris *v.* Boston, Revere Beach & Lynn Railroad. Middlesex County. Pending. Settled, together with the preceding case, for \$5,000.

J. Arthur Heaton *v.* Commonwealth. Suffolk County. Settled by agreement for \$50,000 flat.

Josiah H. Stickney *et al. s. v.* Commonwealth. Middlesex County. Settled by agreement for \$30,000.

Sarah A. Bacon *v.* Commonwealth. Middlesex County. Trial by jury. Verdict, \$2,245.66.

Henry P. Walcott *v.* Commonwealth. Suffolk County. Settled by agreement for \$11,500 and costs.

President and Fellows of Harvard College *v.* Commonwealth. Suffolk County. Pending.

Caroline E. Ricker and George A. Wilson *v.* Commonwealth. Suffolk County. Settled by agreement for \$4,922.49.

John E. Cassidy *v.* Commonwealth. Middlesex County. Trial by jury. Verdict, \$25,735.13. Petitioner excepted. Argued before supreme judicial court. Pending.

John E. Cassidy *v.* Commonwealth. Middlesex County. Trial by jury. Verdict, \$9,373.66. Petitioner excepted. Argued before supreme judicial court. Pending.

John E. Cassidy *v.* Commonwealth. Middlesex County. Pending.

Frederick H. Ridge *v.* Commonwealth. Suffolk County. Settled by Metropolitan Park Commission.

Mary A. Russell *v.* Commonwealth. Middlesex County. Settled by agreement for \$1,594.41.

William I. Palmer *v.* Commonwealth. Middlesex County. Settled by Metropolitan Park Commission.

William I. Palmer *et al. v.* Commonwealth. Middlesex County. Settled by Metropolitan Park Commission.

Eugene W. Graves *et al. v.* Commonwealth. Norfolk County. Pending.

Joseph O. Bullard *v.* Commonwealth. Suffolk County. Pending.

Willard A. Bullard *v.* Commonwealth. Suffolk County. Pending.

George W. Fifield, administrator, *et al. v.* Commonwealth. Suffolk County. Settled by agreement.

Michael Maloney *v.* Commonwealth. Suffolk County. Settled by agreement for \$5,000 and costs.

Ezra C. Dudley *v.* Commonwealth. Norfolk County. Pending.

George W. Fifield, administrator, *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Arthur D. McClellan *v.* Commonwealth. Suffolk County. Pending.

John McMahon *v.* Commonwealth. Suffolk County. Pending.

Lynn & Boston Railway Company *v.* Commonwealth. Suffolk County. Pending.

Boston & Revere Electric Street Railway Company *v.* Commonwealth. Suffolk County. Pending.

John B. Solari *v.* Commonwealth. Suffolk County. Pending.

Lucy A. Hayward, executrix, *v.* Commonwealth. Suffolk County. Pending.

Alvin C. Norcross *v.* Commonwealth. Suffolk County. Pending.

Lewis V. Bronsden *et als. v.* Commonwealth. Norfolk County. Pending.

James Manning *v.* Commonwealth. Suffolk County. Settled for \$2,500.

Samuel H. Seager *v.* Commonwealth. Essex County. Settled for \$4,000, without interest.

Lemuel Crossman *et al. v.* Commonwealth. Norfolk County. Pending.

Stephen W. Watts *v.* Commonwealth. Essex County. Settled by agreement for \$3,000 flat.

William Dwyer *et al. v.* Commonwealth. Middlesex County. Settled by agreement.

William Dwyer *v.* Commonwealth. Middlesex County. Settled by agreement. (This case and the case above were settled together for \$8,093.42.)

Elijah George *v.* Commonwealth. Norfolk County. Pending.

Elijah George *v.* Commonwealth. Norfolk County. Pending.

James W. Brodbine *v.* Commonwealth. Suffolk County. Pending.

John McMahon *v.* Commonwealth. Suffolk County. Pending.

Arthur D. McClellan *v.* Commonwealth. Suffolk County. Pending.

John McMahon *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Emroy W. Braman *v.* Commonwealth. Suffolk County. Pending.

Moses S. Case, trustee, *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Moses S. Case, trustee, *v.* Boston & Maine Railroad Company. Middlesex County. Pending.

Frederick T. Hurley *v.* Boston, Revere Beach & Lynn Railroad Company. Suffolk County. Pending.

Anna J. Derrington *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Jerre M. Hill *v.* Commonwealth. Norfolk County. Settled by agreement for \$900 and costs.

Saco and Biddeford Savings Institution *v.* Commonwealth. Norfolk County. Pending.

Oliver Ames *et al. v.* City of Somerville. Middlesex County. Pending.

Jane Putnam *et al. v.* Boston & Maine Railroad Company. Middlesex County. Pending.

Jane Putnam *et al. v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Louis V. Bronsdon *v.* Commonwealth. Norfolk County. Pending.

Lemuel Crossman *et al.* *v.* Commonwealth. Norfolk County. Pending.

Washington G. Benedict *v.* Commonwealth. Suffolk County. Pending.

George S. Lee *et al.* *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

Mary E. McCarthy, guardian, *v.* Commonwealth. Middlesex County. Pending.

A. Selwyn Lynde *v.* Commonwealth. Middlesex County. Pending.

John B. Solari *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

John B. Solari *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

John B. Solari *v.* Boston, Revere Beach & Lynn Railroad Company. Middlesex County. Pending.

George W. Chipman, assignee, *v.* Commonwealth. Middlesex County. Pending.

Helen D. Johnson *v.* Commonwealth. Middlesex County. Pending.

William H. Wrenn *v.* Commonwealth. Middlesex County. Pending.

John P. Kuenzel *v.* Commonwealth. Middlesex County. Pending.

Mary E. Warner *v.* Commonwealth. Middlesex County. Pending.

Charles B. Wilson *v.* Commonwealth. Middlesex County. Pending.

Lorenzo Noble *v.* Commonwealth. Middlesex County. Pending.

Mary A. Gill *v.* Commonwealth. Middlesex County. Pending.

Boston & Maine Railroad Company *v.* Commonwealth. Middlesex County. Pending.

2. METROPOLITAN SEWERAGE COMMISSION.

Petitions to the superior court for assessment of damages alleged to have been sustained by the taking of rights and easements in lands by said commission.

City of Boston *v.* Commonwealth. Suffolk County. Pending.

Amos Stone *et al.* *v.* Commonwealth. Suffolk County. Pending.

John Griffin *v.* Commonwealth. Suffolk County. Pending.

Nicholas J. Penney *v.* Commonwealth. Middlesex County. Verdict for defendant. Plaintiff's exceptions now pending before supreme judicial court.

Lucretia T. Carr *et al. v.* Commonwealth. Middlesex County.
Settled for \$300.

Joseph Stone *et al. v.* Commonwealth. Suffolk County. Pending.
Joseph Stone *et al. v.* Commonwealth. Middlesex County. Pending.

J. Eugene Cochrane *v.* Commonwealth. Norfolk County. Trial
by jury. Verdict for petitioner for \$11,445. Defendant ex-
cepted. Pending.

Margery A. Hickey *v.* Commonwealth. Norfolk County. Settled
by agreement for \$425, without costs.

3. METROPOLITAN WATER BOARD.

Petitions to the superior court for assessment of damages alleged
to have been sustained by the taking of rights and easements in
lands by said commission.

James W. McDonald, executor, Susan M. Moore and De Clinton
Nichols *v.* City of Boston. Worcester County. Pending.

James W. McDonald, executor, *v.* City of Boston. Worcester
County. Settled by agreement.

Selina N. Rice *v.* City of Boston. Worcester County. Settled
by agreement for \$23,750.

James W. McDonald, executor, and Susan M. Moore *v.* City of
Boston. Worcester County. Pending.

Edna R. Hess and Lydia A. Rice, mortgagee, *v.* City of Boston.
Worcester County. Pending.

Josephine B. Kidder *v.* City of Boston. Worcester County. Trial
before an auditor. Finding of \$80 for petitioner.

Carrie L. Williams, administratrix of Henry C. Williams, *v.* City
of Boston. Worcester County. Settled by agreement.

De Clinton Nichols *et al. v.* City of Boston. Worcester County.
Pending.

De Clinton Nichols *et al. v.* City of Boston. Worcester County.
Pending.

De Clinton Nichols *v.* City of Boston. Worcester County. Set-
tled by agreement.

Eliza H. Reed *et als. v.* City of Boston. Worcester County.
Trial by jury. Verdict for petitioner for \$570.40.

Josephine Burnett, Henry Burnett *et al.*, trustees, *v.* City of Bos-
ton. Worcester County. Pending.

Josephine Burnett *et al.*, trustees, *v.* City of Boston. Worcester
County. Pending.

Charles A. Woods *v.* City of Boston. Worcester County. Pend-
ing.

Josephine B. Kidder *v.* Commonwealth. Worcester County. Trial before an auditor. Finding of \$25 for petitioner.

Harry Burnett *et al.* *v.* Commonwealth. Superior court. Pending.

Martha A. S. Forbes *v.* Commonwealth. Worcester County. Trial by jury. Verdict of \$2,200 for plaintiff. Plaintiff excepted.

Argued before supreme judicial court. Exceptions overruled.

Margaret E. Sargent *v.* Commonwealth. Worcester County. Pending.

Hannah McAndrew *v.* Commonwealth. Worcester County. Pending.

Joseph Burnett *v.* City of Boston. Worcester County. Pending.

Ann Moran *et al.* *v.* Commonwealth. Worcester County. Pending.

Mary L. Ballou, trustee, *v.* Commonwealth. Worcester County. Pending.

John J. Clark *v.* Commonwealth. Worcester County. Pending.

John L. Byard *v.* Commonwealth. Worcester County. Pending.

David O'Connell *v.* Commonwealth. Worcester County. Pending.

David O'Connell *v.* Commonwealth. Worcester County. Pending.

John F. Philbin *v.* Commonwealth. Worcester County. Pending.

Josephine L. Pierce *v.* Commonwealth. Worcester County. Pending.

Timothy Fahey *v.* Commonwealth. Worcester County. Pending.

Joseph H. Derosier *v.* Commonwealth. Worcester County. Pending.

Peter Goodnow *v.* Commonwealth. Worcester County. Pending.

Chloe Ann Ballou *v.* Commonwealth. Worcester County. Pending.

Chloe Ann Ballou *v.* Commonwealth. Middlesex County. Pending.

Charles W. Felt *v.* Commonwealth. Worcester County. Pending.

Josephine B. Kidder *v.* Commonwealth. Worcester County. Trial before an auditor. Finding of \$30 for petitioner.

Bridget Kittredge *v.* Commonwealth. Worcester County. Pending.

Felix Nugent *v.* Commonwealth. Worcester County. Pending.

Frederick W. Richardson *v.* Commonwealth. Worcester County. Pending.

John F. Philbin *v.* Commonwealth. Worcester County. Pending.

Thomas H. O'Connor *v.* Commonwealth. Worcester County. Pending.

George Murrman *v.* Commonwealth. Worcester County. Pending.

Robert Cunningham *et al.* *v.* Commonwealth. Worcester County.
Pending.

Hannah E. Cunningham *v.* Commonwealth. Worcester County.
Pending.

Julia Kittredge *v.* Commonwealth. Worcester County. Pending.

Thomas Connors *v.* Commonwealth. Middlesex County. Pending.

Town of Southborough *v.* Commonwealth. Worcester County.
Pending.

Addison Johnson, executor, *v.* Commonwealth. Worcester County.
Pending.

Burnett *et al.*, trustees, *v.* Commonwealth. United States supreme
court. Writ of error. Pending.

Israel G. Howe *v.* Commonwealth. Worcester County. Pending.

Charles L. Johnson *v.* Commonwealth. Worcester County. Pend-
ing.

Charles F. Choate *v.* Commonwealth. Worcester County. Pend-
ing.

Josephine Burnett *et als.*, trustees, *v.* Commonwealth. Worcester
County. Pending.

Charles B. Sawin *v.* Commonwealth. Worcester County. Pending.

William H. Buck *v.* Commonwealth. Worcester County. Pend-
ing.

William H. Buck *v.* Commonwealth. Middlesex County. Pend-
ing.

Cordaville Woolen Company *v.* City of Boston. Middlesex County.
Pending.

Cordaville Woolen Company *v.* City of Boston. Worcester County.
Pending.

Eliza Barnes *v.* Commonwealth. Worcester County. Pending.

Joseph Leonard *v.* Commonwealth. Worcester County. Pending.

Henry O. Sawyer *et als.* *v.* Metropolitan Water Board and the
Commonwealth. Worcester County. Pending.

MISCELLANEOUS CASES FROM ABOVE COMMISSIONS.

Mary E. Connolly *v.* Charles G. Craib. Action of tort in the
superior court, Suffolk County, to recover damages for per-
sonal injuries alleged to have been sustained by an employee
of the contractor in the construction of the metropolitan
sewer, the defendant being the inspector employed by the
Metropolitan Sewerage Commissioners. Pending.

Mary Rohan *v.* Commonwealth. Petition to the superior court for
Suffolk County in the nature of an action of tort for personal
injuries alleged to have been sustained in the construction of
a section of the metropolitan sewer. Pending.

Willard G. Nash *v.* Commonwealth and S. Casparis. Bill in equity in the superior court for Suffolk County to compel the Commonwealth to pay petitioner certain moneys due to Casparis from the Commonwealth and alleged to be due from him to petitioner. Demurrer filed. Demurrer sustained. Argued before the supreme judicial court. Pending.

John P. Sullivan *et al.* *v.* Metropolitan Construction Company and Metropolitan Sewerage Commissioners. Action of tort in the municipal court for the city of Boston for injury caused by construction of metropolitan sewer in Chelsea. Appearance entered. Judgment for the defendant.

Jacob M. Mason *v.* Commonwealth. Action of tort in the superior court of Suffolk County to recover damages for personal injuries alleged to have been sustained by the plaintiff through the negligence of the Metropolitan Water Board in laying water pipes in the city of Medford. Pending.

David M. Biggs *v.* Town of Milton. Action of tort in the superior court of Suffolk County. Judgment for the plaintiff, and judgment satisfied.

City of Boston *v.* Hosea Kingman, Tilly Haynes and George A. Kimball. Action of tort in the superior court of Suffolk County. Pending.

Francis D. Newton *et al.* *v.* Henry H. Sprague *et al.* Petition to superior court, Suffolk County, in the nature of an action of tort to recover damages caused by the alleged filling up of a well belonging to plaintiffs. Pending.

Elmore E. Locke *v.* Michael Tallent *et al.* and Metropolitan Park Commissioners, trustees. Action of contract in the municipal court of Suffolk County. Trustees' answer filed.

4. STATE BOARD OF LUNACY AND CHARITY.

(a) Actions of contract pending in the superior court for Suffolk County to recover charges for the support of insane paupers in State lunatic hospitals, under the provisions of Pub. Sts., c. 87, § 32.

Geo. A. Marden, Treasurer, *v.* City of Cambridge. Suffolk County. Pending.

Same *v.* Same. Suffolk County. Pending.

Same *v.* Same. Suffolk County. Pending.

Same *v.* Same. Suffolk County. Pending.

Same *v.* Town of Peabody. Suffolk County. Pending.

Same *v.* City of Waltham. Suffolk County. Pending.

Henry M. Phillips, Treasurer, *v.* Town of Reading. Suffolk County. Pending.

Same *v.* City of Worcester. Suffolk County. Pending.

Same *v.* City of Cambridge. Suffolk County. Pending.

Same *v.* City of Quincy *et al.* Suffolk County. Pending. (This case has been discontinued against Quincy, and now stands against the city of Boston.)

Same *v.* Town of Stow. Suffolk County. Pending.

Edward P. Shaw, Treasurer, *v.* City of Boston. Suffolk County. Pending.

Edward P. Shaw, Treasurer, *v.* Esau Cooper. Middlesex County. Pending.

E. P. Shaw, Treasurer, *v.* Town of Dedham. Suffolk County. Pending.

(b) Bastardy complaints brought under Pub. Sts., c. 85.

Ellen F. Walsh *v.* Thomas B. Hanlon. Superior court, Suffolk County. Pending.

Mary Learey *v.* Alfred Thornley. Municipal court for the city of Boston. Hearing. Defendant bound over to the superior court. Trial. Verdict of guilty.

Jennie Harley *v.* William Minkle. Superior court, Suffolk County. Verdict of guilty by consent. Defendant committed to jail.

Mary A. Foley *v.* Alvin Tupper. Superior court, Worcester County. Settled for \$50. Complaint dismissed by agreement.

Mary Ann Mulligan *v.* William Dobbins. Roxbury district court. Defendant bound over to superior court. Pending.

Celia Harkins *v.* Walter Harrington. First district court, eastern Middlesex. Hearing. Defendant bound over to superior court. Pending.

MISCELLANEOUS CASES.

The American Ballot Box Association v. the Commonwealth.
Petition to the superior court of Suffolk County for the price of ballot boxes. Settled for \$1,000, without costs.

George H. Titcomb v. Cape Cod Ship Canal Company, George A. Marden, Treasurer, et al. Petition for injunction to restrain the Treasurer of the Commonwealth from the payment of money under St. 1883, c. 259, and St. 1891, c. 397. Answer filed. Pending.

Commonwealth, by Board of Commissioners of Savings Banks, v. Suffolk Trust Company. Petition for injunction and appointment of receiver. Injunction issued. J. Haskell Butler appointed receiver. Pending.

Commonwealth ex rel. Savings Bank Commissioners v. Stockbridge Savings Bank. Petition for injunction and appointment of receiver. Injunction issued, and F. A. Hobbs appointed receiver. First dividend of thirty-three and one-third per cent. paid. Second dividend of sixteen and two-thirds per cent. decreed by the court. F. A. Hobbs was removed from the office of receiver by the court, and after a hearing was sentenced to six months' imprisonment in jail at Boston for contempt of court. He is now under bond to answer to an indictment for embezzlement found against him by the grand jury of Berkshire County. William C. Spaulding of West Stockbridge was appointed by the court receiver in place of Mr. Hobbs. The new receiver has declared a dividend of sixteen per cent. Pending.

George S. Merrill, Insurance Commissioner, v. the Commonwealth Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of section 7 of chapter 522 of the Acts of 1894. Injunction issued, and William B. Stevens, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, v. the Suffolk Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and appointment of a receiver, under the provisions of section 7 of chapter 522 of the Acts of 1894. Injunction issued, and James C. Davis, Esq., appointed receiver. Pending.

Starkes Whiton *et al.*, Board of Savings Bank Commissioners, petitioners, *v.* Globe Investment Company. Petition to the supreme judicial court for Suffolk County, under the provisions of chapter 387 of the Acts of 1888, for an injunction and receiver. Injunction granted, and Henry A. Wyman appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* Patrons' Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Robert H. Leland, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* the Melrose Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Alpheus Sanford, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* Elm Mutual Benefit Society.

Same *v.* Supreme Lodge Chevaliers of Pythias.

Same *v.* Supreme Lodge Ancient Order of Columbus.

Same *v.* The Supreme Lodge of the Order of Fraternity.

Same *v.* Supreme Temple Independent Chevaliers and Ladies of Industry.

Same *v.* Supreme Assembly of the Order of Sons and Daughters of the Maritime Provinces.

Same *v.* Club Lafayette Corporation.

Same *v.* Kurland Brotherhood.

Same *v.* Society of St. John the Baptist.

Same *v.* Société de Secours Mutuels St. Joseph.

These cases were petitions to the supreme judicial court for Suffolk County for injunctions and the appointment of receivers, under the provisions of chapter 340 of the Acts of the year 1895. Injunctions issued, and George S. Merrill was appointed receiver. Final decrees entered.

Commonwealth, by the Board of Savings Bank Commissioners, *v.* Brookfield Savings Bank. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and George W. Johnson appointed receiver. Pending.

Selectmen of the Town of Bourne, petitioners for the changing of a bridge on the New York, New Haven & Hartford Railroad. Pub. Sts., c. 112, §130. Pending.

George S. Merrill, Insurance Commissioner, *v.* Bay State Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Herbert Parker, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* Colonial Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and appointment of a receiver. Injunction issued, and W. O. Underwood, Esq., appointed receiver. Final decree.

S. Homer Woodbridge *v.* Joseph A. Moore and Rufus R. Wade. Petition to the superior court for Suffolk County to test the powers of the respondent Moore as inspector, acting under the authority of chapter 481 of the Acts of 1894. Appearance of the Attorney-General entered. Dismissed.

Commonwealth, by the Board of Savings Bank Commissioners, *v.* the Millis Savings Bank. Petition to the supreme judicial court in Suffolk County for an injunction and the appointment of a receiver. Preliminary injunction granted. Pending.

George S. Merrill, Insurance Commissioner, *v.* Standard Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and receiver under the provisions of St. 1894, c. 522, § 7. Injunction issued, and R. D. Weston-Smith, Esq., appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Central Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of St. 1894, c. 522, § 7. Injunction issued, and R. D. Weston-Smith, Esq., appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Wachusett Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of St. 1894, c. 522, § 7. Injunction issued, and Henry W. Ware, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* Milford Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of St. 1894, c. 522, § 7. Injunction issued, and Wendell Williams, Esq., appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Excelsior Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of St. 1894, c. 522, § 7. Injunction issued, and Edward I. Baker, Esq., appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Commerce Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Godfrey Morse, Esq., appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Guardian Life Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Frank D. Allen, Esq., appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* Security Live Stock Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Alpheus Sanford, Esq., appointed receiver. Pending.

Richard P. O'Reily *v.* Samuel Dalton *et al.* Petition to the supreme judicial court for Suffolk County for a writ of *certiorari*, claiming want of jurisdiction by the board appointed under St. 1893, c. 367, § 65, in the matter of the reorganization of the Eighth Regiment of Infantry, M. V. M. Answer. Pending.

H. Burr Crandall *v.* Charles Price, superintendent. Action of tort in the superior court for Middlesex County for conversion. Pending.

Commonwealth, by the Board of Savings Bank Commissioners, *v.* the Union Loan and Trust Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction granted, and Hon. Samuel W. McCall appointed temporary receiver. Interlocutory decree. Pending.

Commonwealth, by the Board of Savings Bank Commissioners, *v.* the Miners' Savings Bank. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver under the provisions of St. 1894, c. 317, § 6. Injunction issued and served. Pending.

Catherine Drury, petitioner, *v.* Commonwealth *et al.* Petition to the superior court for Worcester County for assessment of damages to land abutting on the State Highway in Leicester alleged to have been caused by changing grade of the street. Appearance entered. Judgment for petitioner for \$200.

Charlotte E. Gould *v.* Commonwealth. Petition to the superior court of Worcester County for land damages caused by taking of land for State highway. Appearance entered. Pending.

Attorney-General *ex rel.* Board of Harbor and Land Commissioners *v.* George H. Ellis. Information in the supreme judicial court for Middlesex County to protect the waters of a great pond under St. 1888, c. 318. Answer. Case referred to a master to find facts, etc., and report. Pending

George B. Foster, petitioner to the probate court for Essex County to be appointed trustee of the will of J. T. Barker of a certain estate to establish a free school in Boxford. Hearing waived. Trustee appointed.

Martin C. Jewett *v.* Massachusetts Highway Commission. Superior court, Franklin County. Petition for assessment of damages alleged to have been caused by the construction of the State highway. Answer filed. Judgment for petitioner for \$205.34.

George S. Merrill, Insurance Commissioner, *v.* Eastern Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Fred H. Kidder, Esq., appointed receiver. Pending.

Henry W. Warren *et al.* *v.* the Town of Holden. Petition to the superior court for Worcester County for assessment of damages to land caused by the alteration of Main Street at the tannery crossing in Holden. Judgment for petitioner for \$4,224.93.

George S. Merrill, Insurance Commissioner, *v.* Suffolk Mutual Accident Association. Petition to the supreme judicial court for Suffolk County for an injunction and a receiver under the provisions of St. 1896, c. 515, § 6. Injunction issued, and George S. Merrill appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* the Boston Fraternity League. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver under St. 1895, c. 340, § 1. Injunction issued, and J. N. Shattuck appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Franklin Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Sam. Chapin, Esq., of Lowell appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Odd Fellows Mutual Benefit Association. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Sam. Chapin, Esq., of Lowell appointed receiver. Final decree.

George S. Merrill, Insurance Commissioner, *v.* Continental Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Edward I. Baker, Esq., of Boston appointed receiver. Pending.

George S. Merrill, Insurance Commissioner, *v.* the Old Colony Mutual Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and William B. French, Esq., of Boston appointed receiver. Pending.

Clara J. Sargent *v.* State Board of Lunacy and Charity. Superior court, Essex County. Appeal on a complaint charging neglect of children under St. 1882, c. 181. Appearance entered. Pending.

George S. Merrill, Insurance Commissioner, *v.* Eagle Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. R. D. Weston-Smith, Esq., of Boston appointed receiver. Pending.

Silas H. Loring *v.* the Town of Holden. Superior court, Worcester County. Petition for assessment of damages to land by alterations of the tannery crossing in Holden. Appearance entered. Judgment for petitioner for \$890.93.

Joseph F. Scott, superintendent, *v.* Phœnix Rattan Company and Eben D. Jordan *et al.*, trustees. Action of contract, superior court, Suffolk County. Company petitioned into insolvency after entry of writ. Claim proved. Pending.

Benjamin F. Bridges, warden, *v.* Phœnix Rattan Company and Eben D. Jordan *et al.*, trustees. Action of contract, superior court, Suffolk County. Company petitioned into insolvency after entry of writ. Edgar N. Hill, Esq., of Boston, and Joseph F. Scott, Esq., of Concord, appointed assignees. Claim proved. Pending.

George H. Ramsdell *v.* the Town of Ashby. Superior court, Middlesex County. Action of tort. Appearance entered. Answer filed. Pending.

Richard Cotter *v.* Board of Cattle Commissioners. Petition for assessment of damages for killing of two condemned cows. Superior court, Plymouth County. Appearance entered. Answer filed. Settled.

Richard Graham *v.* Cattle Commissioners. Superior court, Essex County. Petition for assessment of damages for killing horse. Appearance entered. Motion filed to dismiss. Pending.

Attorney-General *ex rel.* Geo. S. Merrill, Insurance Commissioner, *v.* Massachusetts Benefit Life Association. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Arthur Lord, Esq., and Alfred S. Woodworth, Esq., both of Boston, appointed permanent receivers. Pending.

Frank O. Twitchell *v.* the Security Savings and Loan Association and Edward P. Shaw, Treasurer. Superior court, Suffolk County. Master appointed. Pending.

Horatio G. Herrick, Treasurer Danvers Hospital, *v.* Melancthorn Hanford *et al.* Action of contract to recover board at hospital. Pending.

Rebecca Booth *v.* Commonwealth. Petition to the superior court for Plymouth County for assessment of damages to land caused by construction of State highway. Appearance entered. Answer filed. Pending.

Charles Endicott, Commissioner of Corporations, *v.* Jablochkoff Electric Lighting Company of New England. Petition to the supreme judicial court for Suffolk County for dissolution under Pub. Sts., c. 106, § 55. Pending.

J. B. Haviland *v.* Commonwealth. Petition to the superior court for Suffolk County for services alleged to have been performed for Highway Commission. Pending.

George S. Merrill, Insurance Commissioner, *v.* New England Mutual Fire Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Henry A. Wyman, Esq., of Boston appointed receiver. Pending.

George A. Devlin *v.* Samuel Dalton, Adjutant-General, *et al.*, board of examiners. Petition to the supreme judicial court for Suffolk County for a writ of *certiorari*. Return filed. Hearing. Petition dismissed. On motion of petitioner reported to full court. Petition dismissed.Appealed. Argued before supreme judicial court. Judgment sustained. Reported, 171 Mass. 338.

Henry O. Smith *et al.* *v.* Inhabitants of Leicester and the Commonwealth. Bill in equity in the superior court for Worcester County to restrain town officers from raising money to pay expenses for damages caused by construction of State highway in Leicester. Appearance filed. Pending.

Attorney-General *ex rel.* Frederick L. Cutting, Insurance Commissioner, *v.* New England Live Stock Insurance Company. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Injunction issued, and Charles Walcott, Esq., of Cambridge appointed receiver. Pending.

Horatio G. Herrick, treasurer of Danvers Lunatic Hospital, *v.* Frederick L. Torrey. Action of contract in the superior court for Middlesex County for board of patient in Danvers Lunatic Hospital. Judgment for plaintiff on default.

Attorney-General *ex rel.* Frederick L. Cutting, Insurance Commissioner, *v.* Mercantile Mutual Accident Association. Petition to the supreme judicial court for Suffolk County for an injunction and receiver. Injunction granted, and C. E. Shattuck of Boston appointed receiver.

Robert Codman *et al.* *v.* the Justices of the Superior Court. Petition to the supreme judicial court for Suffolk County for a writ of *certiorari* to quash proceedings of superior court confirming that part of the decree of the commissioners on the Congress Street grade crossing which relates to the taking of the plaintiff's land, on the ground that the commissioners had no authority to take the land, and that the court had no jurisdiction to confirm the decree. Petition dismissed without prejudice and without costs.

Attorney-General *ex rel.* Frederick L. Cutting, Insurance Commissioner, *v.* Bay State Beneficiary Association, of Westfield. Petition to the supreme judicial court for Suffolk County for an injunction and appointment of receiver. Injunction granted, and Henry C. Hyde, Esq., and Henry C. Bliss, Esq., both of West Springfield, appointed temporary receivers. Pending.

Attorney-General *ex rel.* Frederick L. Cutting, Insurance Commissioner, *v.* World Accident Insurance Company. Petition to supreme judicial court for Suffolk County for an injunction and a receiver. Injunction granted, and T. N. Perkins of Boston appointed receiver. Pending.

Attorney-General *ex rel.* Frederick L. Cutting, Insurance Commissioner, *v.* the Massachusetts Masonic Life Association. Petition to the supreme judicial court of Suffolk County for an injunction and receiver under St. 1896, c. 515, § 6. Injunction granted, and Jonathan Barnes, Esq., of Springfield appointed receiver. Pending.

Commonwealth *v.* the Boston Terminal Company. Petition to superior court of Suffolk County for assessment of damages for land taken for new South Union Station. Pending.

E. P. Shaw, Treasurer of the Commonwealth, *v.* Reliable Underwear Company. Corporation tax for 1897. Company in insolvency in Worcester County. Claim proved. Tax paid.

E. P. Shaw, Treasurer of the Commonwealth, *v.* Massachusetts Manufacturing and Electrical Company. Corporation tax for 1897. Company made common law assignment. Claim allowed. Tax paid.

Trustees of the Worcester Lunatic Hospital *v.* Town of Ware.

Action of contract for the board of Hiram L. Wood, a patient in said hospital. Referred to Herbert Parker, district attorney. Pending.

E. P. Shaw, treasurer for the Worcester Lunatic Hospital, *v.* Catherine Crowe. Action of contract for board of patient at said hospital. Referred to Herbert Parker, district attorney. Settled.

Benjamin F. Bridges, warden, *v.* Albert H. D. French. Middlesex County. Claim for \$339.41. Defendant in insolvency. Claim proved. Defendant discharged.

Attorney-General *ex rel.* Insurance Commissioner *v.* Berkshire Health and Accident Association. Information praying for an injunction and the appointment of a receiver. Injunction granted, and Alpheus Sanford, Esq., of Boston appointed receiver. Pending.

Frederick L. Cutting, Insurance Commissioner, *v.* the National Masonic Aid Association. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Decree entered ordering directors to distribute the funds pro rata among the policy holders. Decree entered dissolving the corporation.

Attorney-General *ex rel.* Insurance Commissioner *v.* Berkshire Health and Accident Association. Information praying for an injunction restraining defendant from making contracts providing for payments of benefits in cases of sickness not caused by accident. Reserved for full court. Submitted on briefs. Injunction issued. Reported in "Banker and Tradesman," July 6, 1898.

Frederick L. Cutting, Insurance Commissioner, *v.* Industrial Mutual Accident Association. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction granted. Company allowed to reinsure its risks.

Commonwealth, by the Board of Savings Bank Commissioners, *v.* the Hampshire Savings Bank. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction granted, and Richard W. Irwin, Esq., and Benjamin E. Cook, Jr., Esq., were appointed receivers.

Attorney-General *v.* Providence & Taunton Street Railway Company. Bill in equity to abate a public nuisance. Bill dismissed and injunction dissolved.

Frederick L. Cutting, Insurance Commissioner, *v.* The Union. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction issued, and C. W. Spencer, Esq., appointed receiver. Decree dissolving corporation.

Attorney-General *ex rel.* Insurance Commissioner *v.* Globe Street Railway Employees Mutual Relief Association. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction granted. Final decree.

Attorney-General *v.* the Equitable Accident Insurance Association. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction issued, and Wade Keyes, Esq., of Boston appointed receiver. Pending.

Commonwealth *v.* Board of Public Works of Woburn. Violation of civil service rules. Referred to District-Attorney Frederick N. Wier. Pending.

Commonwealth *v.* Superintendent of Streets of Boston. Violation of civil service rules. Pending.

Commonwealth *v.* Board of Water Commissioners of Chicopee. Violation of civil service rules. Referred to District Attorney Charles L. Gardner. Pending.

Attorney-General *ex rel.* Insurance Commissioner *v.* Order of Fraternal Aid. Petition to the supreme judicial court for an injunction and the appointment of a receiver. Injunction granted, and Winthrop H. Wade, Esq., of Boston appointed receiver. Pending.

John F. Kean, *alias* John F. Kane. Petition to the supreme judicial court for a writ of *habeas corpus*. Petition dismissed without costs.

John A. Macdonald *v.* Commonwealth of Massachusetts. Petition to the supreme judicial court of Suffolk County for a writ of error. Pending.

Frederick L. Cutting, Insurance Commissioner, *v.* the Greylock Beneficiary. Petition, under St. 1895, c. 340, for an injunction and the appointment of a receiver. Injunction issued and A. A. Folsom of Chelsea appointed receiver. Pending.

Selectmen of Danvers *v.* Trustees of Danvers Insane Hospital. Petition for the appointment of three commissioners under St. 1898, c. 564, to determine the sum to be paid by the Commonwealth for water provided to the Danvers Insane Hospital by the town of Danvers. Commissioner appointed. Pending.

Attorney-General *ex rel.* Insurance Commissioner *v.* Woburn Mutual Benefit Association of Massachusetts. Petition to the supreme judicial court for Suffolk County for an injunction and the appointment of a receiver. Perpetual injunction issued.

Attorney-General *ex rel.* Insurance Commissioner *v.* Ideal Benefit Association. Petition to the supreme judicial court of Suffolk County for an injunction and the appointment of a receiver. Injunction granted, and Alden P. White of Salem appointed receiver.

Clarence Murphy *v.* Benjamin F. Bridges, warden Massachusetts State Prison. Petition to the circuit court of the United States for a writ of *habeas corpus*. Petition denied.

Henry E. Bishop *v.* Benjamin F. Bridges, warden Massachusetts State Prison. Petition to the circuit court of the United States for a writ of *habeas corpus*. Petition denied.

Henry E. Bishop *v.* Benjamin F. Bridges, warden Massachusetts State Prison. Petition to the supreme judicial court for Suffolk County for a writ of *habeas corpus*. Petition denied. Exceptions taken to the full court. Exceptions overruled. Reported in "Banker and Tradesman," Oct. 5, 1898.

Clarence Murphy, petitioner. Petition to the supreme judicial court for a writ of error. Argued before full bench. Decision ordering sentence to be reversed and petitioner to be resentenced under the law as it was prior to the passage of St. 1895, c. 504. Reported in "Banker and Tradesman," Jan. 11, 1899.

Diego Le Donne, petitioner. Petition to the supreme judicial court for Suffolk County for a writ of *habeas corpus*. Hearing, and case reported to the full court. Pending.

William H. Bent *et al. v.* Woodward Emery *et als.* Petition to the supreme judicial court for Suffolk County for a writ of injunction to restrain defendants from dredging out South Bay. Pending.

Thomas M. Babson *et al. v.* Commonwealth. Petition to the superior court for Suffolk County for assessment of damages for land taken by the Harbor and Land Commissioners in East Boston. Pending.

Massachusetts Ship Canal Co. *v.* Edward P. Shaw, Treasurer of the Commonwealth. Petition to the supreme judicial court for Suffolk County for a writ of mandamus to compel the Treasurer to receive deposit from the petitioners. Petition dismissed. Reported, 170 Mass. 572.

Commonwealth by its Board of Savings Bank Commissioners *v.* Framingham Savings Bank. Petition to the supreme judicial court for Suffolk County under St. 1894, c. 317, § 6, for an injunction and the appointment of a receiver. Injunction issued, and P. H. Cooney and A. V. Harrington appointed receivers. Pending.

Globe Insurance Company *v.* Lexington. An action of contract in the superior court for Suffolk County for compensation for injuries alleged to have been sustained by the acts of the Gypsy Moth Commissioners. Trial before Bond, J. Finding for the defendant and report to the full court. Argued. Pending.

Clarence Murphy, petitioner. Petition to the supreme judicial court for Suffolk County for a writ of *habeas corpus*. Petition dismissed.

Frederick L. Cutting, Insurance Commissioner, *v.* Supreme Council of United Fellowship. Petition to the supreme judicial court for Suffolk County under St. 1895, c. 340, for an injunction and the appointment of a receiver. Injunction issued, and Oliver Storer, Esq., of Boston appointed receiver. Pending.

Martin O. Rounsville *v.* Commonwealth. Petition to the superior court for Suffolk County for payment of a debt alleged to be due from the Commonwealth for work done on Sherman dam in Middleborough. Settled for \$142.27.

Attorney-General *ex rel.* Insurance Commissioner *v.* Massachusetts National Life Association. Petition to the supreme judicial court for Suffolk County, under St. 1896, c. 515, § 6, for an injunction and the appointment of a receiver. Injunction issued. G. Kress appointed receiver.

Frederick L. Cutting, Insurance Commissioner, *v.* South Shore Masonic Mutual Relief Association of Massachusetts. Petition to the supreme judicial court for Suffolk County, under St. 1895, c. 340, for an injunction and the appointment of a receiver. Injunction issued, and J. H. Flint appointed receiver.

Ocean Accident and Guarantee Company, Limited, of London, England, *v.* Frederick L. Cutting, Insurance Commissioner. Petition to the supreme judicial court for Suffolk County, under St. 1894, c. 522, § 7, for a determination of the question whether petitioners had violated the provisions of section 18 of said statute. Petition discontinued by agreement, the company agreeing not to issue any more of the circulars complained of by the Insurance Commissioner, and to withdraw from publication all those in print.

Commonwealth *v.* Boston Terminal Company. Petition to the superior court of Suffolk County for assessment of damages caused by second taking of land by said Terminal Company. Pending.

Bernard D. O'Connell, petitioner. Petition to supreme judicial court of Suffolk County for a writ of *habeas corpus* to secure petitioner's release from house of correction. Petition dismissed.

Eliza S. Graves *et al. v.* Commonwealth. Petition to superior court of Essex County for damages to petitioner's land caused by laying out State highway. Pending.

City of Boston *v.* Boston Wharf Company. Petition to superior court of Suffolk County for assessment of damages for land taken for grade crossings on Congress Street. James R. Dunbar appointed auditor.

Bernard D. O'Connell, petitioner. Petition to the circuit court of the United States for the district of Massachusetts for a writ of *habeas corpus* to secure petitioner's release from house of correction. Petition dismissed.

Kaiser Hat and Cap Company. Claim for corporation tax for 1897. Company in insolvency. Claim proved. Pending.

Boston Enterprise Manufacturing Company. Claim for corporation tax for 1897. Company in insolvency. Claim proved. Pending.

Stiles & Winslow Leather Company. Claim for corporation tax for 1897. Company in insolvency. Claim proved. Pending. Benj. F. Bridges *v.* Carlos T. Weaver. Claim for merchandise furnished by Massachusetts State Prison. Defendant in insolvency. Claim proved. Pending.

Westborough Insane Asylum *v.* John H. Sherburn. Claim for board of Fannie L. Scott at asylum. Pending.

J. W. Blodget *v.* C. A. Wright, and Treasurer of Commonwealth, trustee. Action of contract. Municipal court, city of Boston.

COLLECTIONS.

Collections have been made by this department as follows:—

Corporation taxes for the year 1897, overdue and referred by the Treasurer of the Commonwealth to the Attorney-General for collection,	\$40,150 91
Interest on same at penal rate of twelve per cent.,	2,199 21
Costs,	774 55
Miscellaneous,	4,341 90
Total,	\$47,466 57

The following table shows a detailed statement of the same:—

	Collected on Account of Corporation tax for 1897.	Interest.	Total.
A. H. Atwood Company,	\$76 30	\$2 28	\$78 58
A. M. Gardner Hardware Company,	455 96	9 10	465 06
A. S. Dexter & Co., (incorporated), American Camera Manufacturing Company,	45 78	90	46 68
American Casket Hardware Company,	144 97	3 78	148 75
American Cultivator Publishing Company,	129 71	2 60	132 31
American Fertilizer Company,	152 60	13 02	165 62
American Fertilizer Company,	125 00	—	125 00
Andover Press, Limited,	9 15	91	10 06
Arlington Hotel Company,	30 52	93	31 45
Athol Gas and Electric Company,	129 71	5 00	134 71
B. H. Woodsum Company,	140 39	4 49	144 88
Bates Machine Company,	750 00	—	750 00
Bay State Chair Company,	137 34	11 32	148 66
Bay State Metal Works,	198 38	25 87	224 25
Blanchard Machine Company,	137 34	12 08	149 42
Block Plant Electric Light Company,	36 24	21	36 45
Boston Advertiser Company,	91 56	3 58	95 14
Boston Book Company,	1,144 50	40 81	1,185 31
Boston Leasehold Company,	228 90	4 65	233 55
Boston Parcel Delivery Company,	763 00	22 00	785 00
Boston Traveller Company,	305 20	39 06	344 26
Bracketts Market Corporation,	190 75	16 79	207 54

	Collected on Account of Corporation tax for 1897.	Interest.	Total.
Brookfield Brick Company, . . .	\$134 28	\$5 37	\$139 65
Brooks Bank Note Company, . . .	640 92	18 16	659 08
C. W. Mutell Manufacturing Company,	57 22	1 95	59 17
Cambridge Co-operative Society, . . .	35 86	3 14	39 00
Cape Ann Granite Railroad Company,	305 20	27 16	332 36
Charles A. Millen Company, . . .	369 29	34 00	403 29
Charles A. White Company, . . .	15 26	24	15 50
Charles S. Brown Company, . . .	808 78	25 34	834 12
Chequassett Lumber Company, . . .	881 26	35 82	917 08
Childs & Kent Express Company, . . .	206 01	19 36	225 37
Coates Clipper Manufacturing Company,	238 81	20 92	259 73
Coburn Stationery Company,	106 82	9 61	116 43
Composite Brake Shoe Company,	457 80	16 00	473 80
Co-operative Printing Society,	53 71	2 14	55 85
Cunningham Lumber Company,	952 22	28 57	980 79
Cyclopaedia Publishing Company,	549 36	47 61	596 97
Damon Brick Company,	144 28	4 32	148 60
Damon Safe and Iron Works Company,	190 75	17 17	207 92
Dorchester Building Material Company,	437 96	10 19	448 15
Dunbar Mills Company,	1,190 28	57 45	1,247 73
Dunne Lyceum Bureau,	15 26	46	15 72
E. H. Saxton Company,	137 34	4 10	141 44
E. P. Sanderson Company,	228 90	6 74	235 64
Elastic Tip Company,	1,678 60	23 22	1,701 82
Equity Co-operative Boot and Shoe Manufacturing Company,	7 63	12	7 75
Evening Gazette Company,	114 45	9 50	123 95
Fall River Street Railway Company,	432 48	15 96	448 44
Fifield Tool Company,	552 41	16 57	568 98
Foxborough Foundry and Machine Company,	153 21	18 13	171 34
Framingham Electric Company,	61 04	1 40	62 44
Franklin Educational Company,	137 34	16 48	153 82
Gallagher Express Company,	76 30	2 22	78 52
George P. Staples & Co., (incor- porated),	763 00	67 14	830 14
Gilman Snow Guard Company,	76 30	2 30	78 60
H. B. Stevens Company,	190 75	15 30	206 05
Harcourt Paper Box Company,	57 98	7 42	65 40
Highland Foundry Company,	1,030 05	66 68	1,096 73
Horace Partridge Company,	3,052 00	315 36	3,367 36
Howe Lumber Company,	634 20	59 80	694 00
Ice Bait and Fish Company,	61 04	1 36	62 40
Johnson Manufacturing Company,	1,959 38	103 90	2,063 28
Joss Brothers Company,	99 19	6 95	106 14
Kimball Brothers Company,	1,526 00	138 87	1,664 87
L. E. Fletcher Company,	152 60	6 87	159 47

	Collected on Account of Corporation tax for 1897.	Interest.	Total.
Lakeside Manufacturing Company,	\$63 32	\$4 70	\$68 02
Lamprey Boiler Furnace Mouth Protector Company, . . .	190 75	17 22	207 97
Lang & Jacobs, . . .	87 74	2 63	90 37
Leominster Shirt Company, . . .	831 67	16 36	848 03
Lovewell Shoe Company, . . .	220 46	16 83	237 29
Malden Stock Laundry Company, .	16 78	1 44	18 22
Manufacturers' Gazette Publishing Company, . . .	36 62	3 15	39 77
Marshall Paper Company, . . .	321 98	9 65	331 63
Medway Water Company, . . .	22 89	1 96	24 85
Merrill Piano Company, . . .	763 00	44 16	807 16
Methyl Dental Company, . . .	15 26	53	15 79
Model Manufacturing Company, .	213 64	25 00	238 64
Morrill Brothers Company, . . .	381 50	11 45	392 95
N. C. Boutelle Furniture Company,	83 93	7 47	91 40
Natick Gas Light Company, . . .	103 76	42	104 18
Newburyport Herald Company, .	65 61	1 65	67 26
Norfolk Central Street Railway Company, . . .	991 90	19 20	1,011 10
O. D. Pillsbury Company, . . .	30 52	1 48	32 00
Old Corner Wall Paper Company,	228 90	9 15	238 05
Oriental Coffee House Company, .	76 30	2 30	78 60
Paphro D. Pike Company, . . .	152 60	—	152 60
Parker Sampson & Adams Com- pany, . . .	381 50	9 00	390 50
Paul Askenasy Company, . . .	38 15	1 53	39 68
People's Combination Clothing Company, . . .	228 90	6 87	235 77
Pierce Construction Company, . .	379 97	17 10	397 07
Pilgrim Iron Foundry Company, .	57 98	2 02	60 00
Putnam Company, . . .	228 90	6 10	235 00
Quaboag Steamboat Company, .	46 69	1 87	48 56
Quinsigamond Lake Steamboat Company, . . .	40 00	—	40 00
R. H. Long Shoe Manufacturing Company, . . .	76 30	2 67	78 97
Reliable Underwear Company, . .	289 94	—	289 94
Rogers-Young Company, . . .	766 05	22 98	789 03
S. Armstrong Company, . . .	152 60	4 58	157 18
Scandia Granite Works, . . .	38 15	1 01	39 16
Shady Hill Nursery Company, .	584 45	50 85	635 30
Simpson Spring Company, . . .	408 00	20 00	428 00
Smith & Gardner Supply Com- pany, . . .	76 30	1 96	78 26
Southbridge Water Supply Com- pany, . . .	848 45	63 63	912 08
Springfield Elevator and Pump Company, . . .	533 10	43 57	576 67
Sumner Drug and Chemical Com- pany, . . .	183 12	17 03	200 15
Swedish Razor Company, . . .	71 72	2 15	73 87
T. F. Little Oil Company, . . .	46 54	93	47 47

	Collected on Account of Corporation tax for 1897.	Interest.	Total.
Taunton Evening News, . . .	\$62 56	\$1 84	\$64 40
Taunton Herald Company, . . .	26 70	81	27 51
Telegram Publishing Company, .	45 78	2 47	48 25
Thompson & Odell Company, .	419 65	34 98	454 63
Turner's Falls Lumber Company,	288 03	23 80	311 83
Union Cycle Manufacturing Com- pany,	190 75	4 44	195 19
W. C. Young Manufacturing Com- pany,	238 05	11 10	249 15
W. E. Rice Company,	219 74	6 59	226 33
Wade & Reed Company,	915 60	81 46	997 06
Walnut Publishing Company, . .	76 30	6 79	83 09
Walter S. Cushing Company, . .	61 04	2 75	63 79
Weymouth Seam Face Granite Company,	99 95	12 89	112 84
Whittier Drug Company,	53 41	1 09	54 50
William H. Keeden Printing Com- pany,	83 93	2 50	86 43
William H. King Sons Company, .	83 93	7 55	91 48
Woodward & Brown Piano Com- pany,	343 35	10 06	353 41
Worcester Steam Heating Com- pany,	169 38	4 74	174 12
	\$40,150 91	\$2,199 21	\$42,350 12

MISCELLANEOUS COLLECTIONS.

George W. Prouty Company, fee for filing certificate of condition required by P. S., c. 106, § 54,	\$5 00
International Lard and Oil Refining Company, fee for filing papers required by St. 1884, c. 330,	15 00
R. H. Long Shoe Company, fee for filing certificate of condition required by P. S., c. 106, § 54,	5 00
Financial Information Company, <i>ibid.</i> ,	5 00
Simpson Spring Company, <i>ibid.</i> ,	5 00
Bardwell & Anderson Company, <i>ibid.</i> ,	5 00
Hyde Park Co-operative Association, <i>ibid.</i> ,	5 00
Bates Machine Company, <i>ibid.</i> ,	5 00
Old Colony Boot and Shoe Company, <i>ibid.</i> ,	5 00
Boston Fire Despatch, certificate of condition under Acts 1891, c. 341, and Acts 1894, c. 541,	5 00
Athol Gas and Electric Company, inspector of gas and gas meters tax,	4 48
Athol Gas and Electric Company, Gas and Electric Light Commissioners tax,	22 09
Gardner Gas, Fuel and Light Company, inspector of gas and gas meters tax,	4 88

William Piper, balance due on merchandise bought of Massachusetts State Prison,	\$50 00
Howard Wade, merchandise bought of Massachusetts State Prison,	25 00
National Plaster Company, fee for filing certificate of condition required by P. S., c. 106, § 54,	5 00
Marlboro Gas Light Company, inspector of gas and gas meters tax,	9 80
American Soda Fountain Company, penalty for violating St. 1884, c. 269, by throwing refuse into tide waters at Fort Point Channel,	20 00
Plymouth Gas Light Company, penalty under P. S., c. 61, § 14, .	100 00
Ipswich Gas Light Company, penalty for violation of St. 1886, c. 346, § 2,	5 00
Manufacturers' Gas Light Company of Fall River, penalty for violation of St. 1885, c. 346, § 2,	40 00
Stoughton Gas and Electric Company, <i>ibid.</i> ,	5 00
Williamstown Gas Company, <i>ibid.</i> ,	5 00
John T. Scully <i>et al.</i> , assessment for tide water displaced on Charles River in Cambridge,	3,040 94
Brophy Bros. Shoe Company, fee for filing certificate of condition required by P. S., c. 106, § 54,	5 00
Massachusetts Car Company, corporation tax for 1896,	847 11
Lewis S. Grey, merchandise furnished by Massachusetts State Prison,	42 75
Athol Gas and Electric Company, fee for filing certificate of condition required by P. S., c. 106, § 54,	5 00
Hingham Seam Face Granite Company, <i>ibid.</i> ,	5 00
The L. E. Fletcher Company, <i>ibid.</i> ,	5 00
Phillips Woolen Company, <i>ibid.</i> ,	5 00
E. B. Warren Company, <i>ibid.</i> ,	5 00
F. P. Norton Cigar Company, <i>ibid.</i> ,	5 00
Block Plant Electric Light Company, Gas and Electric Light Commissioners' expenses,	19 85
	<hr/>
	\$4,341 90

EXTRADITION AND INTERSTATE RENDITION.

The following applications for requisitions for fugitives from justice have been referred by His Excellency the Governor to this department during the year ending Jan. 18, 1899, for examination and report thereon :—

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime Charged.	Venue of Prosecution.	Report.
1898.					
Feb. 8,	Maine, . . .	Richard L. Ford and Oscar M. Drake.	Breaking and entering and larceny, . . .	Plymouth, .	Lawful and in proper form.
Feb. 11,	Great Britain, . . .	Abraham Tebbitt, . . .	Cheating by means of false pretences and larceny, . . .	Suffolk, .	" " "
Feb. 15,	District of Columbia, . . .	John Dempsey, <i>alias</i> John Taylor, . . .	Robbery and larceny in building, . . .	Suffolk, .	" " "
March 8,	New York, . . .	Henry W. Hitchings, . . .	Forgery of checks, . . .	Suffolk, .	" " "
March 8,	New York, . . .	Annie McLean, . . .	Larceny, . . .	Suffolk, .	" " "
March 18,	New Hampshire, . . .	Franklin A. Mudgett, . . .	Polygamy, . . .	Suffolk, .	" " "
April 1,	District of Columbia, . . .	Stephen Wallace, <i>alias</i> Stephen Hall, . . .	Breaking and entering, . . .	Middlesex, .	" " "
April 12,	New York, . . .	J. Lord Tucker, . . .	Uttering forged instruments, . . .	Suffolk, .	" " "
April 12,	Pennsylvania, . . .	George B. White, . . .	Obcating by means of false pretences, . . .	Suffolk, .	" " "
May 10,	New York, . . .	Roland Ferguson, . . .	Escaping from Massachusetts Reformatory, . . .	Middlesex, .	" " "
May 18,	New York, . . .	Elbridge B. Williams, . . .	Larceny, . . .	Norfolk, .	" " "
May 27,	Connecticut, . . .	Paul Young, . . .	Larceny, . . .	Essex, .	" " "
June 10,	New York, . . .	Maurice Connely, . . .	Larceny, . . .	Suffolk, .	" " "

June	14,	Ohio, . . .	Isaac Garfield, <i>alias</i> Isaac Garfield,	Cheating and forgery,	Suffolk,
June	18,	New York, . . .	Joseph Kelly and Edward Welch, . . .	Breaking and entering,	Suffolk,
June	25,	Indiana, . . .	George F. Gaudage, . . .	Larceny,	Suffolk,
July	1,	Washington, . . .	Willard E. Baker, . . .	Embezzlement,	Suffolk,
July	8,	California, . . .	John F. Waters, . . .	Embezzlement,	Suffolk,
July	19,	New York, . . .	Bert Ray, <i>alias</i> Charles Burke, . . .	Assault and battery with a dangerous weapon and larceny,	Suffolk,
July	26,	Kentucky, . . .	Lewis Warner, . . .	Embezzlement,	Hampshire,
Aug.	9,	New York, . . .	Lewis Rce, <i>alias</i> Lewis F. Reese, . . .	Breaking and entering and larceny,	Essex,
Aug.	17,	Iowa, . . .	Daniel Mullen, . . .	Escaping from Massachusetts State Prison, . . .	Suffolk,
Aug.	23,	New York, . . .	Richard Kelly, <i>alias</i> Harry Kelly, . . .	Forgery of checks and uttering same,	Suffolk,
Oct.	1,	New York, . . .	Robert Walker, . . .	Cheating by means of false pretences,	Suffolk,
Oct.	4,	Illinois, . . .	Arthur Hagan, . . .	Murder,	Suffolk,
Oct.	6,	Pennsylvania, . . .	Francis Baldwin, . . .	Escaping from Massachusetts Reformatory, . . .	Middlesex,
Oct.	28,	Illinois, . . .	Frederick I. Bartlett, . . .	Embezzlement,	Suffolk,
Nov.	14,	New York, . . .	Junius Dumontis, <i>alias</i> Harold Gregory Rowe, . . .	Larceny in a building,	Suffolk,
Nov.	15,	Rhode Island, . . .	Nelson Goodison, . . .	Larceny,	Bristol,
Nov.	22,	New York, . . .	Adrian T. Brown, . . .	Breaking and entering,	Franklin,
Nov.	22,	New Jersey, . . .	Joseph Riley, . . .	Breaking and entering and larceny,	Middlesex,
Dec.	10,	Illinois, . . .	Thomas V. Beckwith, . . .	Embezzlement,	Suffolk,
Dec.	21,	Rhode Island, . . .	Edward F. O'Brien, . . .	Obtaining property by false pretences,	Bristol,
Dec.	27,	Connecticut, . . .	John D. Van Alstyne, . . .	Larceny,	Suffolk,

Extradition and Interstate Rendition — Concluded.

The following requisitions upon His Excellency the Governor for the surrender of fugitives from the justice of other States have been referred by him to this department during the year ending Jan. 18, 1899, for examination and report thereon: —

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime Charged.	Report.
1898.				Lawful and in proper form.
Jan. 26,	New Jersey,	Walter Webster Rourk,	Grand larceny,	" " "
March 22,	Maine, *	John Sullivan, Frank Sullivan, John E. Casey.	Breaking and entering,	" " "
March 22,	Connecticut,	Walter P. May,	Forgery,	" " "
April 4,	Vermont, *	George W. Wheeler,	Larceny,	" " "
April 26,	Rhode Island,	Charles Holmes,	Embezzlement,	" " "
July 5,	New York,	Philip W. Morrison,	Grand larceny,	Defective.
Oct. 18,	New York,	Chester Goodspeed,	Rape in the second degree,	Lawful and in proper form.
Nov. 8,	Vermont, *	Joseph T. Lamm,	Kidnapping and bigamy,	" " "
Dec. 3,	New York,	Perry Yerrington,	Grand larceny,	" " "

RULES OF PRACTICE IN INTERSTATE RENDITION.

Every application to the Governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this Commonwealth, must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers, or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney: —

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled.

(b) That, in his opinion, the ends of public justice require that the alleged criminal be brought to this Commonwealth for trial, at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever; and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason given for the absence of such affidavit.

2. Proof by affidavit of facts and circumstances satisfying the Executive that the alleged criminal has fled from the justice of the State, and is in the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate. (A notary public is not a magistrate within the meaning of the statutes.) It must also be shown that a complaint has been made, copies of which must accompany the requisition, such complaint to be accompanied by affidavits to the facts constituting the offence charged by persons having actual knowledge thereof, and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

6. Upon the renewal of an application,—for example, on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted,—new or certi-

fied copies of papers, in conformity with the above rules, must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailor, sheriff or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.



